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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. [redacted] 128

LINCOLN BUILDING ASSOCIATES, *Appellant*,

v.

LOCKWOOD BARR, *Appellee*.

LINCOLN BUILDING ASSOCIATES, *Appellant*,

v.

JOSEPH JAME, *Appellee*.

LINCOLN BUILDING ASSOCIATES, *Appellant*,

v.

MARTIN STERN, Doing Business under the Name of THE SWIM FOR HEALTH ASSOCIATION, *Appellee*.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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MARTIN STERN, Doing Business under the Name of THE SWIM FOR HEALTH ASSOCIATION,
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On Appeal from the Court of Appeals of the State of New York

JURISDICTIONAL STATEMENT

Appellant, Lincoln Building Associates, appeals from the final order of the Court of Appeals of the State of New York, dated and entered on July 11, 1956, affirming three

final orders of the Municipal Court of the City of New York, Borough of Manhattan, Ninth District, one in each of the above-entitled cases, each of which orders was in favor of the appellee in each of said cases, and dismissed the appellant's petition therein on the merits after trial.

Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of these appeals and that substantial questions are presented.

Since these three cases involve identical questions decided by the Court of Appeals of the State of New York (hereinaffer referred to as the "New York Court of Appeals") in a single opinion and disposed of by a single order on the basis of a record common to all three cases, this single jurisdictional statement covering all three cases is being filed in accordance with Rule 15(3) of the Rules of this Court.

Opinions Below

The opinion of the Municipal Court of the City of New York, Borough of Manhattan, Ninth District, is reported in 1 Misc. 2d 560 and 149 N.Y.S. 2d 460. The majority and dissenting opinions in the New York Court of Appeals are reported in 1 N. Y. 2d 413, 153 N.Y.S. 2d 633 and 135 N. E. 2d 801, and copies thereof are appended hereto as Appendix A.

Jurisdiction

Each of these cases is a summary proceeding brought pursuant to Article 83 of the Civil Practice Act of the State of New York to recover the possession of demised premises used for office purposes, on the ground that the tenant-appellee is holding over without the landlord-appellant's permission beyond the expiration of his term, and that the Emergency Business Space Rent Control Law of the State of New York, as extended by Chapter

701 of the Laws of 1955 of the State of New York, which permits such holding over, is unconstitutional under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The final order of the New York Court of Appeals herein was dated July 11, 1956 and was entered on the same date in the office of the Clerk of said Court.[1] A copy of said order is appended hereto as Appendix B.

The notices of appeal herein, one in each case, were filed in the office of the Clerk of the Municipal Court of the City of New York, Borough of Manhattan, Ninth District, the court possessed of the record herein, on October 8, 1956.[2]

The jurisdiction of the Supreme Court to review the decision of the New York Court of Appeals herein by appeal is conferred by Title 28, United States Code, Section 1257(2).

The following cases sustain the jurisdiction of the Supreme Court to review the final order of the New York Court of Appeals on appeal in these cases:

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[1] Subsequently, on July 19, 1956, the Municipal Court of the City of New York, Borough of Manhattan, Ninth District, acting in a ministerial capacity under the New York practice, entered an order making the said order of the New York Court of Appeals its order.

[2] By successive orders of Justice Benjamin Shalleck, a Justice of the said Municipal Court of the City of New York, consented to by the Attorney General of the State of New York, who appeared herein to defend the constitutionality of the Emergency Business Space Rent Control Law of the State of New York, and by the respective appellees herein, the appellant's time to docket the appeals and file the record herein in this Court was extended to and including May 15, 1957. A primary reason for such extension was to await the conclusion of the 1957 session of the New York State Legislature, which ended March 30, 1957, in order to ascertain whether office space would be decontrolled by the Legislature. The Legislature extended the controls for another year.

That the final order of the New York Court of Appeals herein is a final judgment or decree under 28 U.S.C. § 1257:

Department of Banking v. *Pink*, 317 U. S. 264;
Cole v. *Violette*, 319 U. S. 581.

That the Supreme Court has jurisdiction to review on appeal such a final judgment or decree where the decision below sustains a state statute against a claim of its invalidity under the Constitution of the United States:

Covey v. *Town of Somers*, 351 U. S. 141;
Walker v. *City of Hutchinson*, 352 U. S. 112.

That the appellant's substantive rights are violated by the Emergency Business Space Rent Control Law of the State of New York, as extended by Chapter 701 of the Laws of 1955 of the State of New York:

Chastleton Corp. v. *Sinclair*, 264 U. S. 543.

Statute Involved

The statute involved in these cases, the validity of which under the Constitution of the United States is herein challenged by appellant, is the Emergency Business Space Rent Control Law of the State of New York, as extended by Chapter 701 of the Laws of 1955 of the State of New York (hereinafter referred to as the "Emergency Business Space Law"). Said Chapter 701 provisions extended said rent control legislation for another year to July 1, 1956.

The complete text of the Emergency Business Space Law as so extended in 1955 is appended hereto as Appendix C, together with a list of the statutory compilations in which said Law may be found.

The specific provisions of the Emergency Business Space Law which are involved in these proceedings are the following:

Section 1 of the Law, containing the legislative declaration of emergency, provides:

> "Unjust, unreasonable and oppressive leases and agreements for the payment of rent for office space and stores and other business space in certain cities having been and now being exacted by landlords under stress of prevailing conditions accelerated by war, and an abundance of eviction proceedings against tenants having been commenced or threatened by landlords, whereby breakdown has taken place in normal processes of bargaining and freedom of contract has become an illusory concept, and whereby there have come into existence conditions threatening to obstruct the production and distribution of essential civilian commodities, and the rendition of essential services, professional and otherwise, and to divert essential manpower, materials and transportation facilities, and to cause inflation, and all of the foregoing situations and conditions being a threat to essential civilian activities, and to the public safety, health, and general welfare of the people of the state of New York, it is hereby declared that a public emergency exists without promise of relief so long as conditions brought about by war continue, and that action by the legislature is imperative and will not admit of delay. It is hereby found, therefore, as a matter of legislative determination, that for the duration of such emergency, the establishment of a maximum rent for office and store and other business space at a level of fifteen per centum above rents charged on June first, nineteen hundred forty-four or at a level otherwise determined as hereinafter provided, will curb the evils arising from such emergency and will accomplish the purposes hereof. This act is declared to be a measure designed to pro-

tect and promote the public health, safety and general welfare, to aid essential civilian activities, and to conserve manpower, essential materials and transportation facilities, and to prevent inflation, and is made necessary by an existing emergency.'

Section 8 of said Law provides, subject to certain enumerated exceptions not applicable to the tenant-appellees herein:

"So long as the tenant continues to pay the rent to which the landlord is entitled, under the provisions of this act, no tenant shall be removed from any business space, by action or proceeding to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and notwithstanding the issuance of any order to dispossess, warrant or process prior to the effective date of this act, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which is inconsistent with any of the provisions of this act * * *."

Section 17 of said Law, as amended by section 3 of said Chapter 701 of the Laws of 1955,[1] provides as to the

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[1] Said section 3 is the provision of said Chapter 701 extending, as previously noted, said business space rent control legislation for another year and is the only portion of said Chapter 701 here relevant.

The text of said section 3 is as follows (square brackets indicate the deletion in the prior law and italics the new law):

"§ 3. Section seventeen of such law, as last amended by chapter four hundred forty-seven of the laws of nineteen hundred fifty-four, is hereby amended to read as follows:

"§ 17. The emergency herein described is hereby declared to continue until July first, nineteen hundred [fifty-five] *fifty-six*."

duration of the aforesaid emergency declared in Section 1 of the Law:

> "The emergency herein described is hereby declared to continue until July first, nineteen hundred fifty-six."

Since the institution of these cases, the Emergency Business Space Law was further extended, with amendments not affecting the status of the tenant-appellees herein, until July 1, 1958. See, Chapter 735 of the Laws of 1956 of the State of New York, declaring the aforesaid emergency to continue until July 1, 1957; Chapter 452 of the Laws of 1957 of the State of New York, declaring the aforesaid emergency to continue until July 1, 1958.

Questions Presented

Whether the Emergency Business Space Rent Control Law of the State of New York, as extended by Chapter 701 of the Laws of 1955 of the State of New York, in so far as it affects office space,[1] violates Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the landlord-appellant herein of its property without due process of law and by denying to it the equal protection of the laws.[2]

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[1] The Emergency Business Space Law applies to both office space and stores. However, at the insistence of the Attorney General of the State of New York, who defended the constitutionality of the Law, the trial of these cases and the evidence presented were, and therefore these appeals necessarily are, confined to office space.

[2] In the courts below, appellant also contended that the Emergency Business Space Law violates the Contract Clause of the Federal Constitution (Art. I, § 10). Appellant does not press this contention at the present time inasmuch as it believes that the gravamen thereof is sufficiently comprehended within its contentions based on the Fourteenth Amendment.

Statement

In these three summary proceedings, instituted in the Municipal Court of the City of New York, Borough of Manhattan, Ninth District, in September 1955, the landlord-appellant (hereinafter referred to as "Landlord") sought to recover the possession of office premises occupied by the tenant-appellees herein, respectively, a public relations man, a lawyer and a Swim for Health Association (L. Exs. 4, 5 and 6),[1] on the ground that each of said tenants holds over without the Landlord's permission after the expiration of their respective terms (R. 16-18, 33-35, 48-50). Such holding over by the appellees is pursuant to and by virtue of the provisions of the Emergency Business Space Law which prohibits the dispossession of appellees notwithstanding the expiration of their respective terms so long as they pay their respective rents (R. 17-18, 29; 34-35, 44; 49-50, 60), and Landlord accordingly alleged in each proceeding that the Emergency Business Space Law is null and void because it violates the Federal Constitution (R. 24, 40-41, 56).[2]

In an attempt to insure that all the facts would be presented to the trial court, Landlord served notice of the commencement of the proceedings on the Attorney General of the State of New York and secured a court order which made it the duty of the Attorney General to defend the constitutionality of the Emergency Business Space Law (Section 71 of the Executive Law of the State of New York) (R. 30, 45, 59, 159). The Attorney

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[1] The symbol "L. Ex. ....." refers to Landlord's exhibits herein and the symbol "R. ....." refers to pages of the record on appeal as printed for the use of the New York Court of Appeals.

[2] Appellant also alleged and contended below that the Emergency Business Space Law violated the Constitution of the State of New York. Since the decision of the New York Court of Appeals on that question, which was against appellant, is not reviewable in this Court, all references to such state constitutional allegation are omitted from this Statement.

General appeared in the proceedings and thereafter assumed the responsibility for defense of the constitutionality of the Law.

The three proceedings were tried together over a period of several weeks in the Municipal Court of the City of New York, Borough of Manhattan, Ninth District, before Justice Benjamin Shalleck. The record is common to all three proceedings.

By decision dated February 24, 1956, contained in a single opinion applicable to all three proceedings, Justice Shalleck upheld the constitutionality of the Emergency Business Space Law (R. 60-84) (1 Misc. 2d 560, 149 N.Y.S. 2d 460), and, in each of the proceedings, awarded a final order, entered February 27, 1956, in favor of each of the respective tenant-appellees, dismissing Landlord's petition on the merits.

Landlord appealed directly to the New York Court of Appeals on constitutional grounds from said final orders of the Municipal Court. In a 5-2 decision (Judges Burke and Van Voorhis, dissenting), dated July 11, 1956, applicable to all three proceedings, the New York Court of Appeals ruled in favor of the validity of the Emergency Business Space Law (Appendix A annexed hereto), and by order, dated July 11, 1956, affirmed the orders of the Municipal Court (Appendix B annexed hereto).

How the Federal Questions Are Presented

The constitutional questions presented on these appeals were raised at the very outset of these proceedings in Landlord's petitions herein. Landlord's petition in each of these proceedings alleged that the Emergency Business Space Law violates "Section 1 of the Fourteenth Amendment of the Constitution of the United States * * * by depriving the petitioner of its property without due process of law, Section 1 of the Fourteenth Amendment of the

Constitution of the United States * * * by denying to the petitioner the equal protection of the laws" (R. 24, 40-41, 56). Said allegations were denied by each of the appellees and the Attorney General of the State of New York (R. 29, 30, 44, 45, 59).

The decision of the trial court herein (Shalleck, J.), in favor of the constitutional validity of the Emergency Business Space Law, specifically notes that (R. 60) (1 Misc. 2d at 561, 149 N.Y.S. 2d at 462):

> "The landlord challenges the constitutionality of the Emergency Business Space Rent Control Law (L. 1955, c. 701). It argues that that law violates the due process and equal protection clauses of the 14th Amendment of the United States Constitution * * *."

Landlord's notices of appeal to the New York Court of Appeals from the aforesaid orders of the Municipal Court each stated (R. 4-5, 6-7, 8-9):

> "* * * this appeal presents only constitutional questions involving the validity of statutory provisions of the State of New York under the Constitution * * * of * * * the United States."

The majority opinion of the New York Court of Appeals, in disposing of said appeals, upheld the constitutional validity of the Emergency Business Space Law, stating in pertinent part, as follows (Appendix A, p. a1, *infra*):

> "This appeal * * * presents for our consideration the constitutionality of the 1955 re-enactment of the Business Rent Law (L. 1955, ch. 701) insofar as it affects office space only. Unconstitutionality is claimed by appellants under the due process and equal protection clauses (U. S. Const., 14th Amdt. * * *) * * * on the ground that the emergency originally justifying the law has now come to an end."

The dissenting opinion of Burke, J., concurred in by Van Voorhis, J., also shows that federal questions were raised by Landlord. Said opinion states in pertinent part, as follows (Appendix A, p. a9, *infra*):

> "The Business Rent Law (L. 1945, ch. 314, as amd. by L. 1955, ch. 701) is unconstitutional and violates * * * the Constitution of the United States."

Background and History of the Emergency Business Space Law

(a) The Emergency Business Space Law first went into effect on March 28, 1945, while World War II was still being fought (Chapter 314 of the Laws of 1945 of the State of New York). At that time the economy of the entire nation was on a war footing, with military production and military needs paramount. Strict rationing of essential commodities and drastic controls over materials, production, distribution, prices, housing rents and virtually all other aspects of civil life had been put into effect early in the war in order to assure the production of war material and such civilian commodities as were consistent with the war effort and in order to check war-induced inflation (R. 459, 479, 526-27, 1863, 1889-91).

As a consequence of these war-time controls, the construction of buildings for civilian purposes ceased. Business firms in New York City producing military goods and essential civilian commodities consequently had difficulty in finding the additional space needed to carry on their activities, and the imbalance between the demand for and supply of space became such that tenants were forced to yield to practically any terms imposed by their landlords in order to retain their existing space.

A specially created State Joint Legislative Committee to Inquire into and Study Commercial Rents in New York

City, in 1944 over a period of six months, conducted an exhaustive investigation into the New York City commercial and business space situation and held numerous private and public hearings (N. Y. Legis. Doc. (1945) No. 2, pp. 9-10) (L. Ex. 155). Said Committee reported to the Legislature (*id.* at p. 18) that "the health, morals, safety and general welfare of the People of the State of New York, as well as the safety of the Nation, and the successful prosecution of the war and essential civilian activity" required the enactment of the statute that became the Emergency Commercial Space Rent Control Law of the State of New York (Chapter 3 of the Laws of 1945 of the State of New York), regulating primarily loft space under a system of controls substantially identical to that later enacted in the Emergency Business Space Law for office space.

As for office space, said Committee reported that conditions did not "for the time being, manifest a sufficient departure from normal landlord-tenant relationships to warrant legislative intervention"; but the Committee stated that it was "maintaining close surveillance over this situation and will continue to do so" (*ibid.*).

On February 26, 1945, a month after the Emergency Commercial Space Rent Control Law became effective, said Joint Legislative Committee rendered a supplemental report in which it concluded, on the basis of its continuing inquiry, that the dangers "to the war effort, to the public health, morals, safety and general welfare, and to the continuance of essential civilian activities and services", which it had found to be inherent in the situation affecting commercial space, were now threatening business space, including offices and retail stores; and the Committee recommended the prompt enactment of remedial legislation (N. Y. Legis. Doc. (1945) No. 31, p. 10) (L. Ex. 156). As a result, the Emergency Business Space Law was enacted, effective March 28, 1945.

Further evidence that the enactment of business and commercial rent controls was a wartime measure appears in statements of the Governor of the State of New York (R. 1801, 1803-04).

(b) As enacted in 1945, the Emergency Business Space Law declared that the emergency described therein was to continue until July 1, 1946 (Chapter 314 of the Laws of 1945 of the State of New York, § 14), at which time the Law was to expire. Since then, the Law has each year been extended for one year, the latest extension, as previously noted on page 7, *supra*, being to July 1, 1958.

The emergency declaration in the Law (Section 1), with only minor changes up to 1951 and none thereafter, has been repeated from year to year.[1]

Because the Emergency Business Space Law was limited in its application to cities with a population of more than 1,000,000, it (like the Emergency Commercial Space Rent Control Law) applied—and applies—only to the City of New York.

New York City is the only area in the United States where commercial or business rent control laws are presently in effect, and other than the City of Albany, where the Albany Business Rent Control Law expired in 1953, it is the only area in the United States that has ever been subject to such laws (N. Y. Legis. Doc. (1954) No. 58, p. 11) (L. Ex. 1).

Since March 30, 1946, newly constructed office space has not been subject to control (Chapter 273 of the Laws of 1946 of the State of New York).

(c) In 1948, the State Joint Legislative Committee to Study Rents recommended that a "temporary State com-

[1] The post-war history of the Emergency Commercial Space Rent Control Law is similar to that of the Emergency Business Space Law.

mission" be appointed for the purpose of gradually decontrolling office, as well as other kinds of, space.

Accordingly, by Chapter 675 of the Laws of 1948 of the State of New York, the Temporary State Commission To Study Rents and Rental Conditions (hereinafter referred to as the "Commission") was created as the fact-finding agency of the State Legislature. One of its chief functions was to "inquire into the need for amending and the gradual discontinuing of such laws".

Prior to 1950, when a tenant vacated space it remained subject to statutory regulation. By a 1950 amendment, space vacated became decontrolled (Chapter 326 of the Laws of 1950 of the State of New York).

By virtue of that amendment of 1950, large amounts of office space have become decontrolled by reason of tenants vacating space.[1]

Evidence before the Commission showed that, by early 1955, less than 18.4% of office tenants were statutory tenants (R. 1817, 1830).[2]

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[1] In 1956 (Chapter 735 of the Laws of 1956 of the State of New York), there was enacted a complex optional lease decontrol procedure whereby office space having an emergency rent of $20,000 a year or more could be decontrolled effective *July 1, 1958*. In 1957 (Chapter 452 of the Laws of 1957 of the State of New York), there was enacted a similar optional lease decontrol procedure whereby office space having an emergency rent of $10,000 a year or more can be decontrolled effective *July 1, 1959*. No substantial decontrol can ensue from these measures inasmuch as, according to evidence before the Commission in 1955, only 4.7% of the approximately 18% of office tenants who were statutory tenants in early 1955 paid more than $7,500 rent per year (R. 1830). None of the tenant-appellees herein is subject to said optional lease decontrol procedures (L. Exs. 4, 5, 6).

[2] The figure of 18.4% is from a Real Estate Board survey in December 1954 of 188 office buildings in Manhattan built prior to 1946 (R. 1817). As noted above, there are no statutory office tenants in buildings built since 1946. The actual percentage of statutory tenants to *all* office tenants, therefore, is less than the 18.4% shown. The survey was presented to the Commission in 1955 and is in evidence (R. 1329, 1808).

The Nature of the Evidence at the Trial

The proof presented by Landlord fell into two broad categories, as follows:

(1) Landlord proved that the Commission had no facts before it supporting any of the statements in the emergency declaration contained in the Law, which purported to show that the situation with respect to office space threatens the public safety, health or general welfare.

Landlord also showed that the Commission had itself admitted in writing that it had no knowledge or information of any such facts.

(2) Landlord proved affirmatively, through the testimony of real estate experts, management agents, owners of property, real estate brokers, an economic expert (Dr. Jules Backman)[1] and statisticians (all supported by uncontroverted documentary proof), that, contrary to the statements contained in the Law's recitals, no facts exist with respect to office space which menace the public health, safety or general welfare.

The detailed and documented evidence adduced by Landlord is contained in over 1,100 printed pages of testimony and over 240 exhibits.

No controverting proof whatever was presented by the Attorney General or the tenants.

At the conclusion of Landlord's case, the Attorney General made a series of motions to dismiss.

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[1] Backman's qualifications are outstanding and they are listed on five pages of the record (R. 1846-50). Indeed, he was the expert chosen by the Commission itself in 1953 to make a study of the residential control laws. That study was incorporated in the Commission's annual report for 1953 (N. Y. Legis. Doc. (1953) No. 43, pp. 27-89) (L. Ex. 2).

All of these motions were denied, and the court affirmatively ruled that "* * * *insofar as the landlord's case is concerned, they have made out a prima facie case;* * *" (R. 1550-52).

For his case, and the tenants' case, the Attorney General introduced no evidence, oral or documentary. He merely called the court's attention to portions of the legislative record that had already been marked in evidence (R. 1552, 1553), and rested (R. 1554).

The Attorney General then renewed, at the end of the entire case, all the motions he had made at the end of Landlord's case (R. 1554). All those motions were *again denied* (R. 1554).

The court thus ruled, both at the end of Landlord's case and at the end of the entire case, that the evidence adduced and the legislative record established a *prima facie* case in favor of Landlord—against which no controverting evidence had been introduced.

The Legislative Record Which Preceded the Extension of the Law Here Under Attack Conclusively Demonstrates That the Legislature Had No Facts, and Knew of No Facts, Showing That the Removal of Office Space Rent Controls Would Have Any Adverse Impact on the Health, Safety or General Welfare of the People of the State of New York.

The complete record, including the Commission's own internal minutes, of whatever was before the Commission in the way of facts pertaining to office space, was introduced in evidence (R. 1472, 187-88, 1330).

(a) The Commission held a meeting on December 15, 1953. At that meeting, the Commission was put on notice by its legal consultant that, unless it made a comprehensive

urvey to determine the extent of the emergency, the constitutionality of the Law might be subject to attack (R. 1558).

(b) In its annual report to the Legislature for 1954, dated March 10, 1954, the Commission stated that it was undertaking such a survey, and that such a survey was necessary to inform it of the facts (N. Y. Legis. Doc. (1954) No. 58) (L. Ex. 1).

The Commission reported (p. 11) that its technical staff had begun, and was still engaged, in making a "comprehensive statewide survey and restudy of rental conditions", with particular emphasis on commercial and business space in New York City. The Commission also stated (p. 11) that the comprehensive study would not be available in time for use in formulating recommendations for submission to the 1954 session of the Legislature, and that it looked forward to completion of the survey in the hope that it would reveal conditions warranting relaxation or *repeal* of the controls.

The Commission emphasized (p. 11) that "True conditions as revealed by our study will dictate the action to be taken". It concluded (p. 14) that "more definitive recommendations" could not be made to the State Legislature until conclusions were arrived at "as a result of the survey of rental conditions now in progress", and stressed the fact that any recommendations "must be supported by the findings of the legal and technical staffs".

This was a frank public confession to the Legislature and the public of what, as we have seen, had been privately conceded in the minutes of the Commission, namely, that it had no facts showing the existence of any emergency with respect to office space—or supporting any of the matters set forth in the legislative declaration—and that the Commission needed a survey of its own to ascertain the facts.

(c) No such survey was ever made by the Commission, or its staff, with respect to office space.

The trial court below so found (R. 67).

(d) After its report of March 10, 1954, and prior to the Law of 1955 here complained of, the Commission conducted a one day public hearing.

Only a small portion of the public hearing concerned office space (R. 1905-58, 1808-30). The bulk of the hearing was devoted to lofts and stores and is irrelevant here.

Various interested persons appeared at the hearing, some on their own behalf and some claiming to represent groups of persons. No one was sworn, no one was cross-examined, or allowed to be, as to statements he made and no attempt was made to verify any statement that was made. People merely got up and made statements from the floor (R. 1905-58).

The portions of the public hearing, and of the written statements submitted, dealing with office space can be searched in vain for any facts showing that decontrol would have any adverse impact on the health, safety or general welfare of the people of the State, that any of the recitals in the emergency declaration are true, or justifying the exercise of the police power with respect to office space (R. 1905-58, 1808-30).

During the course of the public hearing, various members of the Commission observed in effect that they were not getting the essential facts *via* the public hearing (R. 1955-56, 1958).

The Commission was fully aware that it could not secure the necessary facts through a public hearing of this nature (see N. Y. Legis. Doc. (1955) No. 73, p. 11). (A.G. Ex. A1).[1] It had held such hearings in the past, including

[1] The symbol "A.G. Ex. ....." refers to exhibits of the Attorney General of the State of New York herein.

the year 1953 (*e.g.*, see N. Y. Legis. Doc. (1953) No. 43, p. 13) (L. Ex. 2). But in its internal minutes at the end of 1954, and in its public report for 1954, it had stated that the necessary procedure for ascertaining the facts was to conduct its own survey. This it never did for office space.

That the Commission, as a result of the 1955 public hearing, received no substantial information as to whether emergency conditions existed in fact, is recognized in the Commission's annual report for 1955 (N. Y. Legis. Doc. (1955) No. 73) (A.G. Ex. A1). The Commission thus stated (p. 15):

> "It is remarkable that none of those who testified seemed to understand the purpose of the emergency laws."

(e) After its 1954 report to the State Legislature, referred to above, and prior to the public hearing of March 18, 1955, the Commission held only one meeting in 1955, on March 16, and that did not concern office space (R. 192).

After the public hearing of Friday, March 18, 1955, the Commission held one further meeting, on the following Wednesday, March 23, 1955 (R. 1959a-c). The minutes do not reflect any statements that facts had been shown at the hearing or elsewhere which indicated the need for controls.

Eight days after that meeting, the Commission rendered its annual report for 1955 (N. Y. Legis. Doc. (1955) No. 73) (A.G. Ex. A1). The Commission did not there report to the State Legislature the existence of any facts showing that any emergency existed with regard to office space, or that any of the recitals in the legislative declaration was true.

(f) The conduct of the Commission, subsequent to the issuance of its annual report in March 1955, is also proof that it was satisfied that no emergency exists.

On July 1, 1955—the very day the 1955 extension went into effect—the Commission closed its office in New York City (R. 1438).

(g) It is also significant that the Governor of the State of New York did not, in his annual message of January 5, 1955, recommend that the State Legislature extend the Emergency Business Space Law, although such recommendations had been made in prior years (R. 1327-28). Nor did the Governor make any such recommendation in 1956.

(h) The Commission's annual report for 1956, dated March 15, was issued while the appeals herein were pending in the New York Court of Appeals (N. Y. Legis. Doc. (1956) No. 57).[1]

The report noted (p. 11) that a public hearing was held by the Commission on February 10, 1956—the same kind of hearing that was held on March 18, 1955—the principal thrust of which concerned loft and store space, rather than office space.

The Commission conceded (pp. 11-12) that it secured no facts *via* the 1956 public hearing.

The Commission summarized the position of tenants who appeared at the so-called hearing thus: if rent controls are continued for another two years, they will be in a better position to secure advantageous leases from landlords (p. 11).

The Commission admitted in its report (p. 11) that it had no proof that landlords are charging "oppressive or unreasonable rentals."

(i) The foregoing legislative record conclusively demonstrates that the fact-finding agency of the Legislature of the State of New York had no facts, and knew of no

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[1] This Court may take judicial notice of this published, public document.

facts, showing that the removal of office controls would have an adverse impact upon the health, safety or general welfare of the people of the State.

The Pooled Knowledge of the Legislators

The majority of the New York Court of Appeals, in its opinion, refers to the pooled general knowledge of the legislators themselves (Appendix A, p. a5, *infra*). However, there is no indication as to what that pooled general knowledge could possibly be.

Certainly, it is to be doubted that the legislators' pooled knowledge of the facts was greater or different from that which their own fact-finding commission had. Moreover, if there was a pooled general knowledge, it was reflected in the recitals of the law which recitals, it will be shown, had relation solely to war and inflationary conditions as they existed in 1945.

The Evidence in the Record Shows Beyond All Reasonable Doubt That There Was No Factual Basis in 1955 for Any of the Recitals in the Emergency Business Space Law Purporting to Show the Manner in Which Conditions in Office Space Constitute a Threat to the Public Health, Safety and Welfare of the People of the State of New York.

(a)

As to the recitals that there have been "unjust, unreasonable and oppressive leases" and an "abundance of eviction proceedings", and a "breakdown . . . in normal processes of bargaining".

This identical language was first used in 1945. While these recitals may have been true when the law was initially enacted, none of them was true in 1955.

(i) In the first place, as of 1955 the recitals are indefensible on their face.

As to office space which is subject to control: It just cannot be that there have been "unjust, unreasonable and oppressive leases", or an "abundance of eviction proceedings", or a breakdown "in normal processes of bargaining" with respect to controlled space.

As to office space which is uncontrolled: The mere fact that it is no longer controlled is tantamount to a legislative finding that there have not been "unjust, unreasonable and oppressive leases", or an "abundance of eviction proceedings", or a breakdown "in normal processes of bargaining" with respect to uncontrolled space.

(ii) At the trial, the Attorney General virtually conceded that there was no substance to these recitals. Referring to rentals, he said (R. 692): "*The landlords are not being accused of being unconscionable or unjustified*".

So also, the Commission in its 1956 report (N. Y. Legis. Doc. (1956) No. 57, p. 11) admitted that it has no evidence that landlords are charging "oppressive or unreasonable rentals."

The statements of the Attorney General and of the Commission are borne out by the evidence at the trial herein. The level of competition has, in effect, been fixed by the State Legislature itself. By freeing all new construction from controls in 1946, and releasing vacated space from controls in 1950, the State Legislature has created a free market in which the levels of rentals are determined by unrestricted bargaining. This is evident from the following:

(1) Vast amounts of new office space have been constructed:

The restrictions of World War II on building have not been in effect for many years, and supply is meeting de-

mand unimpeded by artificial restraints (R. 539-44, 1889-93, 501-02, 1871-72).

Since 1947 office space has been constructed in Manhattan in enormous quantities.[1] The figures are as follows:

(1) Office space in existence at end of World War II	about 100,000,000 sq. ft. (R. 951, 954).
(2) New office space actually constructed and opened for occupancy between 1947 and date of trial (November 1955)	10,562,000 sq. ft. (R. 1877).
(3) New office space actually under construction at date of trial to be opened by May 1, 1956	3,513,000 sq. ft. (R. 1833-34, 1878)
(4) New office space actually constructed and opened for occupancy between 1947 and May 1, 1956 (item (2) above plus item (3) above)	14,075,000 sq. ft.
(5) New office space actually under construction on May 1, 1956	1,621,000 sq. ft. (R. 517, 1877, 1833-34, 1878).

That the construction of new office space continues unabated is shown by the fact that at the date of trial there was an additional 4,218,000 sq. ft. of new office space (not included in the foregoing) for which plans had been filed but construction of which had not begun (R. 1877).

There were in addition, so-called "non-competitive" office buildings and specialty buildings, *i.e.*, structures that have been built and occupied solely by the owners thereof,

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[1] The amount of office space in other boroughs is insignificant compared with the amounts in Manhattan (R. 1423-24).

and which thereby provide space for occupants who would otherwise have taken up space in competitive buildings. As to these buildings, the figures are as follows (R. 1879):

New office space actually constructed and opened for occupancy between 1949 and date of trial (November 1955)	1,996,000 sq. ft.
New office space actually under construction at date of trial	463,000 sq. ft.

(2) There is fluidity in the movement of tenants:

At the time of the initial enactment of the Emergency Business Space Law and immediately thereafter, tenants were literally frozen in the spaces they occupied and there was little or no space for them to move into from their existing quarters (R. 258, 1200, 1165-66). As of 1955, however, due to the construction of new office buildings and the release of large space by the federal and state governments, there is fluidity in the movement of tenants, they are able to move about freely from space to space and they do so.[1] Many of the prime office buildings in the City of New York are shown to have high turnovers of tenants.[2] In order to re-rent vacated space, landlords are compelled to break up large vacated areas into smaller units,[3] thereby making more units of space available, particularly for tenants requiring smaller units.

(3) Tenants can bargain and negotiate for office space:

In the period immediately after the initial enactment of the Emergency Business Space Law, and for a long period thereafter, rentals were generally fixed by landlords

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[1] R. 248-59, 266-67, 944, 1165-66, 1017-18, 1041-42, 1200, 855-56.

[2] E.g., R. 369, 1592-94; 369, 1597-1600; 572, 1624-26; 368, 1584-87.

[3] R. 258-59, 921, 256-57, 316-17, 336; 1282, *et seq.*

unilaterally on a "take-it-or-leave-it" basis,[1] and tenants, rather than landlords, decorated, renovated and partitioned space.[2]

All of that has changed. It was shown that tenants are successfully bargaining and negotiating with their landlords on terms and conditions, and that landlords are giving inducements to secure and to keep tenants, as follows:

Rent reductions: Many landlords are required to give rent reductions on re-renting. Many schedules showing such reductions—including reductions in some of the best office buildings in the City of New York—were introduced in evidence.[3]

Free rent concessions: In many cases in order to re-rent space, it is necessary to give free rent concessions for varying periods of time to incoming tenants.[4]

Expenditures for tenants: To rent space and retain tenants, landlords generally are required at their own expense to make renovations, alterations and improvements, such as partitioning, floor covering, new ceilings, fluorescent lighting and air-conditioning.[5] Expenditures for these items were shown to run into very substantial amounts of money.[6]

Negotiated rentals: Except for isolated instances based on special circumstances, rentals requested by landlords are truly "asking rentals," subject to negotiation.[7]

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[1] R. 278-79, 1046.

[2] R. 267, 340, 1200, 807, 877, 723, 1044, 829.

[3] R. 1588, 1601, 1605, 1629, 1632, 1635, 1642, 1650, 1653, 1657, 1683, 1732, 1737, 1747, 1749, 1753, 1755, 1762, 1769, 1770, 1771.

[4] R. 1201, 974, 980, 578, 1044, 829, 833-34, 1647-49, 1652.

[5] R. 256-57, 317, 300, 331-32, 1200, 1205, 886, 804, 877-78, 1020, 722, 726-27, 974, 977-78, 1226, 869, 578, 1044, 1128, 835-36, 837, 849, 1248-49, 1258.

[6] R. 317, 293, 300, 921-22, 923, 1248-49, 1292, 583.

[7] R. 269-70, 278-79, 282, 329, 1185, 1188, 1020, 723, 980, 585, 1046.

(4) Landlords compete with each other for tenants:

At the time of the enactment of the Emergency Business Space Law and for a long period thereafter tenants competed for the infrequent space that appeared.[1]

Those conditions no longer exist. Even in the case of the new, air-conditioned prestige office buildings, landlords compete for tenants.[2] Competition among landlords of both new and old buildings takes the form of extensive advertising[3] and direct mail solicitation[4] and of the widespread practice of canvassing and "raiding", *i. e.*, employing men to go through the buildings of others and solicit tenants to move.[5] In fact, one of the appellees in these proceedings was solicited to move and so informed Landlord (R. 1707). And, not only do landlords employ brokers to obtain tenants, but brokers employ and circularize other brokers to aid them in the search for tenants.[6]

(5) Vacancies are substantial:

It was shown that at the time of the trial herein (November 1955), based on a partial survey of a portion of the 1164 office buildings in Manhattan, there were 1,564,752 square feet of office space in Manhattan imme-

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[1] R. 1165-66, 1200-01, 805, 1018, 267-69, 1168.

[2] R. 264-66, 1183-84, 259, 1042-43, 1166-67, 837, 1201.

[3] R. 264-66, 259, 293, 300, 318, 325, 327, 334, 336, 339-40, 1200-01, 1167, 886, 803, 876, 1019, 722, 724, 727, 1220, 865, 866, 870, 574, 979, 983, 1039, 1044-45, 841-42, 848.

[4] R. 268, 293, 300, 318, 336, 339, 1200-01, 803, 805, 1019, 1043, 830, 840-41.

[5] R. 1042-43, 1166-67, 837, 1201, 259, 293, 318, 803-04, 805, 876, 1019, 723, 866-67, 584-85, 595, 979, 829-30, 701-02.

[6] R. 1577-82, 1709-11, 1738-44, 267-68, 279-84, 293-94, 300, 318, 334, 340, 1200-01, 1155-56, 1164, 1168, 1183-84, 803, 805, 809-11, 698, 711, 1007-08, 1012-13, 723-24, 727-28, 979, 1220, 865, 866, 574, 577, 595, 598, 1040, 1045, 829-30, 841, 848-49.

diately available,[1] and that there were large amounts of vacant office space in the other boroughs of New York City.[2] Many fine, modern office buildings were shown to have substantial vacancy rates.[3]

It was also demonstrated, by numerous exhibits in evidence, that space remains vacant for months, and sometimes for more than a year, even in some of the finest buildings in the City of New York.[4] Such vacancies represented in many cases substantial losses to landlords[5] and occurred despite the most strenuous efforts to find tenants and despite the utilization of all the various devices previously described, such as advertising, use of brokers, canvassing and direct-mail solicitation.[6]

A survey of office space vacancies made by the Real Estate Board of New York—which surveys are limited to the best buildings in the prime office districts in Manhattan—showed for May 1955, 836,589 square feet vacant in the 378 buildings surveyed, a ratio of vacant to occupied space of 1.2% (R. 1963, 1476, 1480). In contrast, the Real Estate Board survey for May, 1946 showed only 100,616 square feet vacant in the 362 buildings surveyed, a ratio of vacant to occupied space of .16% (R. 1838), and, of said 100,616 square feet of vacant space, 70,421 square

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[1] R. 1799, 1738-44; L. Exs. 41, 77, 154.

[2] R. 333-34, 878, 880, 702-03, 1611-12, 1709-11.

[3] E.g., R. 1750, 1147, 1182-83, 1751-52; 1124; 1646, 1647-49, 738; R. 1671, 828, 855, 1672-74.

[4] R. 1584-87, 1592-94, 1597-1600, 1603-04, 1607, 1609, 1611-12, 1615-19, 1624-26, 1631, 1634-35, 1640-41, 1644, 1647-49, 1652, 1655-56, 1664, 1665, 1666, 1667, 1672-75, 1677-81, 1685-87, 1693-95, 1697-99, 1703-04, 1731, 1734-35, 1736, 1746, 1749, 1751-52, 1755, 1757-60, 1762, 1765, 1767, 1768, 1769, 1770, 327-28, 331-32, 333-34, 878, 738, 1228, 584, 854-55.

[5] E.g., $130,000 (R. 321), $88,450 (R. 295), $58,000 (R. 886), $55,108 (R. 721), $46,990 (R. 576).

[6] R. 279-80, 293-94, 300, 318, 325, 327, 334, 339-40, 1155-56, 1184, 886, 802-03, 876-77 710-11, 722-24, 727-28, 1220, 1224, 983, 865, 866, 574-78, 591, 1039-40, 829-30, 832, 835.

feet were concentrated in one building, since demolished, and apparently vacant in May 1946 for unique reasons (R. 1838, 1502, 1504, 1536).

A national survey of office building space (R. 1725-29) showed that New York City had in May 1955 a ratio of vacant to occupied space of 1.89%—a higher ratio than that shown by the Real Estate Board survey of the same date. The national average was shown to be 3.24% and the exhibit stated that in most cities in the United States the vacancy ratio was *below* 2.5%, with which New York does not compare unfavorably (R. 944, 1725-29). There were numerous cities in the United States shown on this survey with a far smaller vacancy ratio than New York, in some cases far below 1% (R. 945, 1725-29). Yet those cities had never had office space rent controls (N. Y. Legis. Doc. (1954) No. 58, p. 11) (L. Ex. 1).

In sum, existing vacancies were shown by the uncontradicted evidence to be such as to create a fluid, competitive market in which bargaining and negotiating flourish.

(b)

> As to the recitals of the Emergency Business Space Law that there "have come into existence conditions threatening to obstruct the production and distribution of essential civilian commodities and the rendition of essential services, professional and otherwise, and to divert essential manpower, materials and transportation facilities."

(i) This legislative declaration is a carry-over from the statute as first enacted during World War II. The terms "essential civilian" "essential services" and "essential manpower" show that the declaration was framed in terms of war conditions. At that time, this statute was enacted

as part of a system of governmental controls directed at assisting the war effort, and at preventing the curtailment of the production of essential goods and services necessary to maintain the armed forces and the civilian population. N. Y. Legis. Doc. (1945) No. 2, p. 17 (L. Ex. 155); N. Y. Legis. Doc. (1945) No. 31, pp. 9-10 (L. Ex. 156).

War conditions have long ended, and the controls that they made necessary have been dismantled (R. 539-44, 1889-91, 1892-93).

(ii) The uncontradicted and unchallenged economic proof at the trial clearly establishes that the conditions described in the legislative declaration did not exist in 1955.

Using detailed and unimpeached statistics, Backman showed that the elimination of office space rent controls could not possibly threaten the volume of goods and services (R. 486-507, 523-25, 1863-76, 1881-82).

Backman also showed that the elimination of such office space rent controls would not obstruct the production and distribution of commodities or the rendition of services (R. 527-30, 532-33). He demonstrated the ability of tenants to absorb any increases in rents that might result (R. 528-532, 1883-86).

In the course of the proceedings below the Attorney General had stated that elimination of controls would mean an increase in annual rents of $100,000,000 to 60,000 tenants (R. 137). No proof of any such facts was offered by the Attorney General at the trial. Nevertheless, Backman used that figure in his calculations as an assumption and showed that, even if that were *arguendo* true, there would be no effect upon the production and distribution of commodities or the rendition of services (R. 532-33).

(c)

As to the Emergency Business Space Law's recital that there have come into existence conditions threatening "to cause inflation."

(i) Like the others, this recital dates back to 1945 when the nation, through an elaborate mechanism of price controls, was waging an all-out battle to control the inflation threatening the war effort. Price controls have long since vanished (R. 539-44, 1889-93; N. Y. Legis. Doc. (1955) No. 73, p. 9) (A. G. Ex. A1), concurrently with the inflation which they were designed to prevent.

Yet the legislative declaration on inflation in the Emergency Business Space Law has remained unchanged, year after year, despite the complete change in conditions since it was first enacted.

(ii) As Backman demonstrated by unchallenged economic data, it is absurd to suggest that any single control, such as rent control—particularly in its present emasculated form—could have any effect upon inflation [illegible] if the law applied nationally rather than being confined to a single city (R. 478-80). Inflation when it threatens or exists, requires a complex mechanism of interrelated controls (R. 478-79, 1889-93). Indeed, control of a single aspect of the economy, without other off-setting controls, may create such pressures elsewhere as itself to be a cause of inflation (R. 479).

Backman also demonstrated the relative unimportance of rents as an item of business costs, and showed that the removal of commercial and business rent controls would not threaten inflation in the City or State of New York (R. 466-67, 478-80, 468-69, 474-77, 1859-62, 458-60, 1855, 1857, 1858).

So also, using the Attorney General's figure of $100,000,000 per year as the amount of rent rises that

would occur if controls were lifted, Backman showed that such increases would constitute ½ of 1% of personal income in the City of New York, or ⅔ of 1% of the City's volume of business. Backman demonstrated that such increases would have absolutely no effect upon the economy or upon inflation (R. 480-82).

(d)

As to the recital that the situation regarding office space menaces the safety, health and general welfare of the people of the State of New York.

There has never been any indication or exposition as to the manner in which office space conditions menace the public health, safety or welfare.

The Majority Opinion of the New York Court of Appeals

The only facts which the majority of that Court singled out in its opinion were (a) the existence of a 1.2% vacancy ratio in office space which was less than the vacancy ratio in 11 major cities and (b) the fact that new buildings being constructed had not produced any noticeable dent in the occupancy ratio of existing structures. However, the majority of the New York Court of Appeals made no effort to relate those facts to the need for continued controls in order to protect the public health, safety or welfare of the people or to show why the removal of controls would have an adverse impact on the public health, safety or welfare.

As noted above, the fact is that if there is a small vacancy ratio, it is present in the uncontrolled space which is available in larger quantities in the City of New York—it being remembered that only about 18% of all space is occupied by statutory tenants. If a small vacancy ratio

presented a threat to the public, from the viewpoint of inflation or threat of exorbitant rents, it would have manifested itself with respect to uncontrolled space. The record shows that it has not—the fact that the Legislature has not reimposed or even suggested reimposing controls with respect to such space is further evidence thereof.

Also as noted above, the unchallenged evidence at the trial was that the removal of controls with respect to the relatively small amount of office space under control would not present a threat of inflation or create the likelihood of exorbitant rents.

Indeed, as noted, both the Attorney General and the Commission conceded that landlords were not charging oppressive or unconscionable rentals even as to the large body of space no longer subject to controls.

The evidence is uncontradicted, as noted above, that such increases in rents in decontrolled space as have occurred have not gravely menaced the welfare of the people of New York. If the remaining space is decontrolled, tenants occupying such space will be able to handle increases in the same way as tenants of space not subject to controls have been able to do. The testimony of Landlord's expert, Backman (whose standing as an expert is recognized to such an extent that the Commission itself utilized his services in 1953) is clear and undisputed that if there was complete decontrol tenants will be able to absorb the increases, and even if they in turn pass on the increases, no threat of inflation would be present.

It is significant that, as the trial court observed in its opinion (R. 71), the Attorney General had an economic expert at his side in court but did not place him on the stand to contradict any statement made by Backman.

The Questions Are Substantial

1. As noted above, pages 9-10, *supra*, the federal questions sought to be reviewed on these appeals were raised at the outset of the proceedings herein. The majority opinion of the New York Court of Appeals resolved those questions against Landlord and held that the Emergency Business Space Law was valid under the Constitution of the United States (page 10, *supra;* Appendix A, pp. a1-a9, *infra*).

2. Landlord contends that there is no reasonable basis for the legislative finding that the situation with respect to office space in the City of New York threatens the health, safety or general welfare of the people of the State of New York. Accordingly, Landlord contends that the Emergency Business Space Law (1) deprives it of its property without due process of law by precluding it from dealing freely with its property and from making contracts of leasing upon terms and conditions determined by competition in the market place, and (2) denies to it the equal protection of the laws by (a) controlling the office space occupied by the tenant-appellees herein while leaving unregulated vacated office space and new space located in New York City and all office space elsewhere in the State, and (b) by controlling the price of the facilities which it sells without controlling the prices of the facilities or services sold by those who occupy its facilities.

3. It is respectfully submitted that the questions presented by these appeals are substantial.

(a) The issues herein are of importance not only to the parties hereto, but to thousands of landlords and tenants of office space in the City of New York, the commercial and financial center of the country.

(b) This Court has never previously had presented to it for its determination a challenge to the constitutionality

of an emergency rent control law based upon a factual showing such as that made here in the course of weeks of trial that there no longer exists a reasonable basis for the legislative findings upon which the rent control legislation is predicated.[1]

(c) The decisions of the courts below are in direct conflict with the rulings of this Court in *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, and the criteria set forth by this Court in *Block* v. *Hirsh*, 256 U. S. 135, and *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242.

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[1] It is true that in *Twentieth Century Associates, Inc.* v. *Waldman*, 326 U. S. 697, this Court, in January 194 , dismissed, for want of a substantial federal question, an appeal involving the constitutionality of the Emergency *Commercial* Space Rent Control Law of the State of New York. However, the *Waldman* case arose soon after the enactment of the statute, at a time when the factual situation was entirely different, did not involve the Law in issue here and no evidence was offered therein contesting the existence of the emergency. The *Waldman* case, it is submitted, could not, in any event, under the doctrine of *Abie State Bank* v. *Bryan*, 282 U. S. 765, preclude this Court from plenary consideration of these appeals. In the *Abie* case this Court held as follows (282 U. S. at 771-72):

> "In answer to the jurisdictional statement filed by the appellants, the appellees asserted the want of jurisdiction in this Court, upon two grounds; (1) that this Court conclusively adjudicated the validity of the Nebraska law against appellant in the suit heretofore brought on its behalf (*Shallenberger* v. *First State Bank of Holstein*, 219 U. S. 114). * * * The question of jurisdiction was postponed to the hearing on the merits.
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> "As to the first objection, it is sufficient to say that the Bank Guaranty Law was sustained by this Court as a police regulation (*Shallenberger* v. *First State Bank of Holstein*, *supra*; *Noble State Bank* v. *Haskell*, 219 U. S. 104, 575), and that *a police regulation, although valid when made, may become, by reason of later events, arbitrary and confiscatory in operation.* *Smith* v. *Illinois Bell Tel. Co.*, 282 U. S. 133, 162; *Allen* v. *St. Louis Iron Mountain & Southern Ry. Co.*, 230 U. S. 553, 555, 556; *Lincoln Gas & Elec. Co.* v. *City of Lincoln*, 250 U. S. 256, 268. In the *Shallenberger* case, the suit was brought immediately upon the enactment of the law, and that decision sustaining the law cannot be regarded as precluding a subsequent suit for the purpose of testing the validity of assessments *in the light of the later actual experience.*" (Emphasis added.)

(i) *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, involved the constitutionality of the District of Columbia residential rent control law, which, enacted in 1919, contained a legislative declaration of an emergency growing out of World War I. Originally the law was passed for a two-year period but Congress in 1921 continued it in force, with amendments, until May 22, 1922. On that day another extension went into effect, which declared that the emergency described in the original Act still existed and would continue until May 22, 1924. The emergency was thus declared to continue into the future, just as in the Emergency Business Space Law.

In August 1922, the rent authorities of the District issued an order purporting to fix reasonable rents from March 1922, and suit was instituted contesting the validity of the order on the ground that the Act was unconstitutional as of 1922. The bill challenging the statute's constitutionality was dismissed on its face, and on appeal this Court reversed in a decision rendered in April 1924, just a few weeks prior to the expiration of the extended Act.

This Court, speaking through Mr. Justice Holmes, ruled as follows (264 U. S. at 547-48):

> "A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate *if the emergency ceases or the facts change even though valid when passed.*" (Emphasis added.)

This Court then found that, as of the time of its decision in 1924, the emergency had ceased and the Act was no longer valid, although it had not yet expired by its terms (264 U. S. at 549). However, since the issue in the case was whether the order of the rent authorities was valid in 1922 when it was issued, this Court held that the facts as to emergency conditions at that time should be "accurately ascertained and carefully weighed" by the trial court

on remand and that the "evidence should be preserved so that if necessary it can be considered by this Court" (264 U. S. at 549).

Mr. Justice Holmes said (p. 548):

> "The order, although retrospective, was passed some time after the latest statute, and long after the original act would have expired. In our opinion it is open to inquire whether the exigency still existed upon which the continued operation of the law depended. It is a matter of public knowledge that the Government has considerably diminished its demand for employees that was one of the great causes of the sudden afflux of people to Washington, and that other causes have lost at least much of their power. It is conceivable that, as is shown in an affidavit attached to the bill, extensive activity in building has added to the ease of finding an abode. *If about all that remains of war conditions is the increased cost of living, that is not in itself a justification of the act.* Without going beyond the limits of judicial knowledge, we can say at least that the plaintiffs' allegations cannot be declared offhand to be unmaintainable, and that it is not impossible that a full development of the facts will show them to be true. *In that case the operation of the statute would be at an end.*" (Emphasis added.)[1]

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[1] We do not know what happened in the *Chastleton* case after it was remanded to the lower court for trial. We do know that despite Mr. Justice Holmes' statement that the emergency had ended by April 1924, Congress on May 17, 1924 nevertheless extended the District of Columbia Rent Law until May 22, 1925. Thereafter, on November 3, 1924, the Court of Appeals for the District of Columbia ruled that the statute was unconstitutional. It so ruled on the ground that the Supreme Court in *Chastleton* had determined that there no longer was any emergency. *Peck* v. *Fink*, 2 F. 2d 912, *cert. denied*, 266 U. S. 631. The *Peck* case thus makes it clear that the courts will not be bound by legislative findings and will make their own determination as to whether emergency conditions exist. The *Peck* case was subsequently followed in *Whaley* v. *Norment*, 6 F. 2d 716 (D. C. Cir.), and in *District of Columbia* v. *McKee*, 24 F. 2d 894 (D. C. Cir.).

Landlord's detailed and documented factual showing at the trial of these proceedings brings these cases squarely within the ruling in *Chastleton* that the operation of the law is at an end when it has been shown that the conditions upon which the continued operation of the law depends no longer exist.

The record herein, summarized above, pages 16-21, *supra*, shows that the State Legislature's fact-finding agency admittedly had no knowledge of any facts justifying the continuance of the Emergency Business Space Law.

The record, pages 21-31, *supra*, also shows that the recitals in the legislative declaration of the Law no longer have any basis in fact, that no emergency conditions exist with respect to office space threatening the public health, safety or general welfare, and that the termination of office rent controls would not create emergency conditions threatening the public health, safety or general welfare.

Accordingly, it is submitted that the Law must fall.

(ii) In *Block* v. *Hirsh*, 256 U. S. 135, in which this Court held the District of Columbia Residential Rent Control Law, as originally enacted, constitutional, this Court, speaking through Mr. Justice Holmes, stressed the temporary nature of the legislation, stating (256 U. S. at 157):

> "The regulation is put and justified only as a temporary measure. See *Wilson* v. *New*, 243 U. S. 332, 345, 346. *Fort Smith & Western R. R. Co.* v. *Mills*, 253 U. S. 206. A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

Thus, in accordance with the foregoing pronouncement of this Court, when the Emergency Business and Commercial Space rent control legislation was first enacted in 1945, it was justified by the State Joint Legislative

Committee,[1] the Governor of the State of New York[2] and the Attorney General of the State of New York[3] as *temporary* legislation required to prevent interference with the war effort and to combat inflation which might hamper that effort.

Here, however the conditions which existed in 1945 and the following years are no longer present. It has never been suggested that any new emergency condition has arisen with respect to office space that currently presents a threat to the public health, safety or welfare. Nor is there any basis in fact, as noted above, for any finding that the decontrols of office space will present such a threat. *In fact, neither the Commission nor the State Legislature has ever made a finding that the decontrol of office space will have a serious adverse impact on the public health, safety or general welfare.*

Despite the foregoing, the Emergency Business Space Law has remained on the statute books for over 12 years and has recently been extended for still another year.

In short, the State Legislature and its fact-finding agency, the Commission, have made a so-called temporary law a permanent part of the statutory regulations of the State of New York. This, we submit, on the basis of the record herein, the State Legislature cannot validly do.

(iii) Furthermore, as is shown by the decision of this Court in *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242, conditions seriously affecting the public welfare must exist before the police power can be invoked on emergency grounds. This is particularly true when what is involved

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[1] N. Y. Legis. Doc. (1945) No. 2 (L. Ex. 155); N. Y. Legis. Doc. (1945) No. 31 (L. Ex. 156).

[2] R. 1801, 1803-04.

[3] In his argument in *Twentieth Century Associates, Inc.* v. *Waldman*, 294 N. Y. 571 at 575, involving the constitutionality of the Emergency Commercial Space Rent Control Law.

is not housing, "a necessary of life",[1] but, as the Governor of New York stated, space with respect to which there is a direct economic correlation between the value thereof and the return in income to the tenant (R. 1805).

The *Levy Leasing Co.* case, 258 U. S. 242, *supra*, involved the first emergency residential laws of New York, those of 1920. Those laws were enacted after reports by legislative commissions which found that there was an actual shortage of space so widespread "that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, legal process was being abused and eviction was being resorted to as never before; and that unreasonable and extortionate increases of rent had frequently resulted in two or more families being obliged to occupy an apartment adequate only for one family, *with a consequert overcrowding, which was resulting in insanitary conditions, disease, immorality, discomfort and widespread social discontent.*" (258 U. S. at 246) (Emphasis added.)

Thus, this Court in sustaining the constitutionality of those laws said (258 U. S. at 245):

> "The warrant for this legislative resort to the police power was the conviction on the part of the state legislators that there existed in the larger cities of the State a social emergency, caused by an insufficient supply of dwelling houses and apartments, so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the State. That such an emergency, if it really existed, would sustain a resort, otherwise valid, to the police power for the purpose of dealing with it cannot be doubted, for, unless relieved, the public welfare would suffer in respects which constitute the primary and undisputed, as well as the most usual, basis and justification for exercise of that power."

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[1] Holmes, J., in *Block* v. *Hirsh*, 256 U. S. 135 at 156.

The record herein is crystal clear that no conditions exist with respect to office space seriously threatening or affecting the public welfare within the rationale of the *Levy Leasing Co.* case.

(d) The only reason that has been advanced for the present continuation of the Emergency Business Space Law is that it is needed in order to give tenants a preferred bargaining position *vis-a-vis* their landlords. In its annual report for 1956 (N. Y. Legis. Doc. (1956) No. 57), the Commission said (p. 11):

> "The representatives of the tenants, on the other hand, argued for continuance because they were unable to negotiate leases, the owners anticipating an early discontinuance of controls (p. 11); that, if landlords now refused to lease on a basis satisfactory to a tenant, the tenant can hold over as a statutory tenant (p. 2); and that, if a two-year continuation of rent controls be had, landlords and tenants will be induced to get together, and will be more likely to adjust their demands (p. 59)."

This is the only reason advanced for the continuation of controls. The Commission mentions no other.

It is no excuse for continuation of controls that, if they are terminated, some office tenants may be asked to pay higher rents. These are not residential tenants who seek shelter when it cannot be found. Office space tenants are business organizations which simply seek to make more profits by paying less rent.

There is no justification in law or in good conscience for the continuation of rent controls for any such purpose. The purpose and effect of police power laws must be the protection of the people as a whole, and not the interests of any single class.

Thus in *Lawton* v. *Steele*, 152 U. S. 133, this Court stated (p. 137):

> "To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, requires such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals."

As Mr. Justice Holmes said in the *Chastleton* case, *supra* (264 U. S. at 548): "If about all that remains of war conditions is the increased cost of living, that is not in itself a justification of the act."

In this case, all that remains is the increased cost of doing business. The police power of the State cannot be used to increase the profits of one group of citizens—tenants—and to lessen the income of another group—landlords.

(e) *The* East New York Savings Bank *case is completely inapposite*: The record at the trial in these cases, the inability of the Commission to report the existence of any facts justifying continued control—indeed, the failure of the Commission even to conduct the investigation it admitted was necessary—should be contrasted with the facts in *East New York Savings Bank* v. *Hahn*, 326 U. S. 230.

In that case, attack was made upon the constitutionality of mortgage moratorium laws by a plaintiff who, at the trial (in which the Attorney General did not participate), merely presented some statistical data. A report which had been made by a State Legislative Committee on the subject of the continuance of the moratorium laws was basic to the case. That report stands as one of the great legislative documents of the State of New York (N. Y. Legis Doc. (1942) No. 45).

The Committee there had gathered, from governmental and expert sources, full information and detailed data regarding employment, pay rolls, weekly earnings, business activity, cost of living, indexes of commodity prices and cost of living, tax delinquencies and tax rates of the cities and villages in the State of New York from 1933, real estate conditions, building activity and construction costs, and a host of other economic data.

The Committee there also had sent out questionnaires to all state banks, trust companies, savings and loan associations, savings banks, national banks and insurance companies in the State of New York calling for a vast amount of information. From it, the Committee was able to compile statistics concerning the number and amount of mortgages held, the number and principal amount in default, the extent and nature of voluntary amortization agreements, the reasons why principal payments were not being made, the situation regarding interest, comparative rates of interest and the extent to which concessions of interest were made, the amount of principal written off, the extent and character of suits being brought, and other detailed material.

The Committee held numerous public hearings, and, in various other ways, too numerous to specify, informed itself fully of all aspects of its problem. This extensive material was thoroughly compiled, analyzed, and studied by the Committee.

On the basis of the complete detailed factual information before it, the Committee estimated that the total principal amount of outstanding mortgages in the State of New York subject to the laws aggregated approximately five billion dollars (N. Y. Legis. Doc. (1942) No. 45, p. 15), and concluded that a sudden termination of the legislation would create a new emergency even more acute than that which existed when the statute was first enacted in 1933 (see 326 U. S. at 235).

The Committee there thus stated (N. Y. Legis. Doc. (1942) No. 45, p. 25):

> "Any sudden liquidation or attempted liquidation of any substantial number of the mortgages now within the protection of the moratorium would tend to generally demoralize the real estate market and result in substantial loss not only to the property owners but to depositors, beneficiaries, and others whose rights are derived from the mortgages.
>
> "When the moratorium legislation was adopted in 1933, it may be that only a small proportion of the mortgages dated prior to July 1, 1932, were then in default. Today that same legislation has suspended foreclosures on a vast multitude of mortgages in which defaults have occurred since its adoption more than eight years ago.
>
> "The sudden termination of the legislation which has dammed up normal liquidation of these mortgages for more than eight years might well result in an emergency more acute than that which the original legislation was intended to alleviate."

The Committee accordingly found that "the sudden termination of the moratorium would of itself now create an emergency" (N. Y. Legis. Doc. (1942) No. 45, p. 5). The Governor of the State of New York, in his Annual Message on January 6, 1943, in discussing the mortgage moratorium, also stated that "we must recognize the existence of a new emergency" (N. Y. Legis. Doc. (1942) No. 1, p. 9).

It was on the basis of this new emergency situation, and on a complete and exhaustive survey and analysis, that the mortgage moratorium legislation was upheld in the *East New York* case (326 U. S. at 233 235).

This Court in *East New York* thus ruled that the State Legislature, with the foregoing information as to new

emergency conditions before it, could reasonably have concluded that those conditions justified a continuation of the moratorium laws as being essential to the welfare of the State.

No such situation is present in the cases at bar.

The contrast between the record in these cases and that in the *East New York* case, and between the activities of the Committee referred to in the *East New York* case and the activities of the Commission relative to the Emergency Business Space Law, is obvious.

The Commission here made no survey, had no facts and did not find that immediate termination of office space controls would bring about emergency conditions.

(f) Finally, it is submitted that the 5-2 division in opinion among the judges of the New York Court of Appeals with respect to the constitutionality of the Emergency Business Space Law itself suggests that the questions presented herein should be given plenary consideration by this Court. *Cf. Louisville & Nashville R. R. Co.* v. *Melton*, 218 U. S. 36, 49.

CONCLUSION

For the foregoing reasons, we believe that the questions presented by these appeals are substantial and that they are of public importance.

Respectfully submitted,

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May, 1957

Appendix A

Opinions in the New York Court of Appeals

1 N. Y. 2d 413, 153 N.Y.S. 2d 633, 135 N. E. 2d 801

LINCOLN BUILDING ASSOCIATES, Appellant, *v.* LOCKWOOD BARR, Respondent.

LINCOLN BUILDING ASSOCIATES, Appellant, *v.* JOSEPH JAME, Respondent.

LINCOLN BUILDING ASSOCIATES, Appellant, *v.* MARTIN STERN, Doing Business under the Name of SWIM FOR HEALTH ASSOCIATION, Respondent.

Decided July 11, 1956.

FROESSEL, J. This appeal is taken directly to us under subdivision 4 of section 588 of the Civil Practice Act from three orders of the Municipal Court of the City of New York, Borough of Manhattan, Ninth District. It presents for our consideration the constitutionality of the 1955 re-enactment of the Business Rent Law (L. 1955, ch. 701) insofar as it affects office space only. Unconstitutionality is claimed by appellants under the due process and equal protection clauses (U. S. Const., 14th Amdt.; N. Y. Const., art. I, §§ 6, 11); the contract clause of the United States Constitution (art. I, § 10), and our own constitutional provision prohibiting the taking of private property without just compensation (N. Y. Const., art. I, § 7), on the ground that the emergency originally justifying the law has now come to an end.

The law is clear. The principles by which to test the constitutionality of a statute resting on the police power

have been asserted over and over again: A legislative enactment carries with it a strong presumption of constitutionality, i.e., it is presumed to be supported by facts known to the Legislature (*United States* v. *Carolene Products Co.*, 304 U. S. 144, 152; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 191; *Carmichael* v. *Southern Coal Co.*, 301 U. S. 495, 509-510; *Defiance Milk Products Co.* v. *Du Mond*, 309 N. Y. 537, 540-541; *East New York Sav. Bank* v. *Hahn*, 293 N. Y. 622, 627-628, affd. 326 U. S. 230). This presumption, however, is not irrebuttable (*Defiance Milk Products Co.* v. *Du Mond*, *supra*, p. 541), and courts may scrutinize the basis of legislative enactments predicated upon the existence of a particular state of facts (*United States* v. *Carolene Products Co.*, *supra*, p. 153; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543); but they may not be concerned with questions as to the "reasonableness, wisdom and propriety" (*South Carolina Highway Dept.* v. *Barnwell Bros.*, *supra*, p. 191; *Day-Brite Lighting* v. *Missouri*, 342 U. S. 421, 423; *Defiance Milk Products Co.* v. *Du Mond*, *supra*, p. 541; *Thompson* v. *Wallin*, 301 N. Y. 476, 488, appeal dismissed 342 U. S. 801; *Matter of Stubbe* v. *Adamson*, 220 N. Y. 459, 469; *People* v. *Griswold*, 213 N. Y. 92, 97), expediency (*Thompson* v. *Wallin*, *supra*; *Carmichael* v. *Southern Coal Co.*, *supra*, p. 515) or "desirability" thereof (*Daniel* v. *Family Ins. Co.*, 336 U. S. 220, 224), and "Where the question of what the facts establish is a fairly-debatable one, we accept and carry into effect the opinion of the legislature" (*Old Dearborn Co.* v. *Seagram Corp.*, 299 U. S. 183; 196; *Matter of Stubbe* v. *Adamson*, *supra*). Nor may courts substitute their judgment for that of the Legislature so long as there can be discovered "any state of facts either known or which could reasonably be assumed" to afford support for the legislative decision to act (*United States* v. *Carolene Products Co.*, *supra*, p. 154; *East New York Sav. Bank*

v. *Hahn*, 326 U. S. 230, 234, *supra*; *South Carolina Highway Dept.* v. *Barnwell Bros.* *supra*, p. 191; *Borden's Co.* v. *Ten Eyck*, 297 U. S. 251, 263). Applying these tests to the case at bar, we are of the opinion that the so-called office rent control law is clearly constitutional, and may not be invalidated by these proceedings.

Historically, emergency business space controls had their genesis in chapter 314 of the Laws of 1945. As the preamble to that enactment pointed out, the nation was then engaged in World War II. War production, the production and distribution of essential civilian commodities, the rendition of essential services, professonal and otherwise, priorities, rationing and other civilian controls to check inflation were the necessary order of things. Another aspect of the national effort to minimize the ravages of an inflationary economy was the control of rentals. The cessation of nonessential civilian construction of housing, business and commercial space was aggravated by increasing demands for such space. Out of this had arisen a condition where, as landlord itself describes it, "business tenants found themselves in a hopeless bargaining position *vis-à-vis* their landlords" (see N. Y. Legis. Doc., 1945, No. 2, pp. 11-17; N. Y. Legis. Doc., 1945, No. 31, pp. 9-10). The act was "declared to be a measure designed to protect and promote the public health; safety and general welfare, to aid the successful prosecution of the war, and essential civilian activities, and to conserve manpower, essential materials and transportation facilities, and to prevent inflation, and is made necessary by an existing emergency." (L. 1945, ch. 314, § 1.) We held the Business Rent Law constitutional in *Matter of Court Square Bldg.* v. *City of New York* (298 N. Y. 380). The Commercial Rent Law was similarly upheld in *Twentieth Century Associates* v. *Waldman* (294 N. Y. 571).

The rent laws were thereafter annually re-enacted, although with relaxing modifications from time to time. Without here narrating in detail the early history of and the subsequent amendments to office rent control laws, it may merely be noted that there is no real issue here as to the continuance of the emergency during the period following the close of World War II, and during the more recent warfare in Korea from 1950 to the summer of 1953.

In 1948, prior to the Korean conflict, the Temporary State Commission was created "to survey and appraise" the rent laws, and "to inquire into the need for amending and the gradual discontinuing of such laws" (L. 1948, ch. 675). As a result of its studies then and during the following years, and as the emergency lessened in intensity, the commission recommended numerous amendments relating to various aspects of the rent laws to allow landlords increased rentals, greater freedom in recovering possession, and various types of other relief (as, e.g., see Business Rent Law, § 2, subd. [c] [allowing rent increases up to 30% over the June 1, 1944 rental]; § 4 [allowing adjustment of rent to provide an 8% return on the fair value of the property]; § 8 [allowing recovery of the property by landlord in a number of specific instances]). New construction has not been controlled since the enactment of section 14 by chapter 273 of the Laws of 1946, and vacated space became decontrolled since the enactment of section 12 by chapter 326 of the Laws of 1950.

In line with its work, the commission continued—and continues—to study and recommend. In 1955, the year in which the challenged statute was enacted, it conducted a public hearing on the extension of controls. Both tenants and landlords were represented—the latter arguing that the controls should be abolished or relaxed, the tenants that they should continue. The commission, however, sub-

sequently concluded only that, "Notwithstanding constantly increasing new rental space and an increasing number of vacancies, particularly in stores, the Commission determined that although lessened in severity, the *emergency continues* to an extent which justifies the continuance of the emergency laws for another year. The extension of these laws, however, is relaxed somewhat in a manner which ultimately will provide gradual decontrol." (N. Y. Legis. Doc., 1955, No. 73, p. 15; emphasis supplied.)

With this the Legislature agreed, and chapter 701 of the Laws of 1955 was passed *unanimously* in both houses and signed by the Governor effective July 1, 1955. This is the particular extension of the statute here under attack —although the act was, after a further hearing on February 10, 1956, again extended until July 1, 1957 by chapter 735 of the Laws of 1956.

The question thus posed is whether there existed in 1955 a reasonable basis for findings justifying continuance of rent controls upon office space. In other words, was the legislative choice without rational basis? (*South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 191-192, *supra.*)

The landlord, recognizing its heavy burden in overcoming the strong presumption of constitutionality, has adduced a large quantity of evidence which it claims demonstrates "beyond any doubt" that, while the statute as originally passed in 1945 was valid, it "has ceased to be constitutional because there is no longer *any* emergency of *any* kind which sustains it" (emphasis supplied). Whereas the law is clear, the same may not be said about the evidence before us. Nor may we leave wholly out of consideration "the pooled general knowledge" of the legislators themselves (*East New York Sav. Bank* v. *Hahn*, 326 U. S. 230, 234, *supra*).

While it is true that most of the proof in the case was presented by the landlord, that evidence bore many car-

marks of conflict within itself. A great deal of it related to miscellaneous data gathered from various sources with respect to numerous office buildings, and more particularly with regard to vacancies, vacancy turnovers, increased and decreased rentals, alterations, improvements and renovations, alleged inducements to tenants, the employment of brokers, and the like—as to all of which legitimate argument as to its impact upon the critical issue has been ably made both ways.

The landlord urged that a substantial increase in office building space afforded a fluidity of movement which placed tenants in a reasonable bargaining position. On the other hand, the Attorney-General, who was permitted to appear in these proceedings pursuant to section 71 of the Executive Law, maintained that builders and others have been prompted to invest many millions of dollars in new construction because of general recognition that an acute shortage of office space, evidencing the continuance of the emergency, still exists—they were not gambling on vacancies.

As to the general ratio of actual vacancies in existing office buildings to the total office space in such buildings, the Attorney-General makes a strong argument from the landlord's own evidence and surveys that the figure was well below what may be considered normal, and among other things points to the graph in an exhibit prepared by the research department of the Real Estate Board of New York, Inc., showing the annual average of so-called above-grade vacancies for the years 1925-1955. It showed that in 1955 the ratio of vacancies was 1.2%—lower even than in 1950 when the ratio was 1.6%—and substantially less than in 11 major cities of the United States where, according to the evidence, the ratios ranged between 3.11% and 10.92%.

He also points out that the July 22, 1955 issue of *Real Estate Analyst* observed that new space was having "neg-

ligible effect on the vacancy rental", and that the February, 1955 issue of *Real Estate Forum*, commenting on "New York's unchallenged position as the world's financial, commercial and business administrative capital", noted that although new buildings were being constructed and leased, they had not produced "any noticeable dent in the occupancy ratio of existing structures", and that nothing like it has happened or is likely to happen anywhere—with both of which statements Mr. Helmsley, the landlord's principal witness and one of its partners, agreed.

As to so-called "fringe buildings", it was shown that even at the height of the postwar emergency some of such structures were not fully rented, one of them having a 25% vacancy ratio in 1944 during the critical period of the war and but 8% or 9% at the time of the trial. The landlord, recognizing the force of the evidence as to the comparatively small percentage of vacancies, takes refuge in the position that "a vacancy statistic is meaningless".

The evidence below followed the general pattern of that presented to the temporary commission at its afore-mentioned 1955 hearing preliminary to the re-enactment in question. While some of the witnesses at that earlier hearing, representing the interests of landlords, suggested immediate cessation of controls, they also recommended, in the alternative, gradual decontrol.

The tenants, on the other hand, urged the commission to maintain controls. Individual representatives concerned themselves with the anticipated sharp rise in rentals in the event that controls were lifted, and with the effect this would have through increased costs and prices and through forced migration of tenants from the city.

At most, then, landlord representatives by their own evidence at both this trial and before the legislative commission did no more than raise a conflict of testimony and opinion—a debatable question as to the existence of an emergency and the need for rent control as to office space.

But the resolution of that question was properly for the Legislature, and no court may substitute therefor its own evaluation of the weight of such conflicting proof (*United States* v. *Carolene Products Co.*, 304 U. S. 144, 154, *supra*).

The legislative commission had been functioning continuously since 1948 and had kept itself informed as to current conditions, recommending relaxation in the law from time to time. As to landlord's complaint that the commission did not make a more detailed survey prior to its recommendation in 1955, we need simply note that the Supreme Court, in *Carmichael* v. *Southern Coal Co.* (301 U. S. 495, 510, *supra*) said: "A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function." (See, also, *Farrington* v. *Pinckney*, 1 N. Y. 2d 74, 88; *East New York Sav. Bank* v. *Hahn*, 326 U. S. 230, 234, *supra*.)

The disposition of this appeal, we might add, is dependent upon the existence of facts justifying the 1955 extension of the law under review. In no way is it determinative of the constitutionality of office pace controls in any later year. Rent controls, all will agree, ought not achieve a status of permanence in our economy. They have no justification except in periods of emergency (see *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571, 582, *supra*; *Matter of People* [*Title & Mtge. Guar. Co.*], 264 N. Y. 69, 94, 95-96). Here, however, there is a rational

basis for the legislative finding. Whether and for how long the Legislature may lawfully continue office rent control must, and shall, be a question open for future review.

The orders appealed from should be affirmed.

BURKE, J. (dissenting). The Business Rent Law (L. 1945, ch. 314, as amd. by L. 1955, ch. 701) is unconstitutional and violates the Constitution of the State of New York and the Constitution of the United States. The record before this court shows that there is no reasonable basis for a legislative finding that the situation as to office space is of an emergency nature threatening the health, safety or general welfare of the people of this State. The constitutionality of rent control laws "rest[s] on the basis of the requirements of a great emergency" (*Orinoco Realty Co.* v. *Bandler*, 233 N. Y. 24, 29). The evidence must demonstrate that the basic facts necessary to validate a statute exist (*Defiance Milk Products Co.* v. *Du Mond*, 309 N. Y. 537; *East New York Sav. Bank* v. *Hahn*, 293 N. Y. 622, affd. 326 U. S. 230). Although a legislative enactment carries with it a presumption of constitutionality (*United States* v. *Carolene Products Co.*, 304 U. S. 144), such presumption is rebuttable.

In the case before this court the landlord has established the absence of any emergency conditions relative to office space by clear and convincing evidence. None of the conditions present when this court sustained the constitutionality of the Business Rent Law (*Matter of Court Square Bldg.* v. *City of New York*, 298 N. Y. 380) obtain now. At that time grave emergency conditions threatened employment, essential civilian production and tended to create inflation. At the end of World War II, there was about 100,000,000 square feet of office space in existence in the city of New York. Since 1947, 14,000,000 square feet of office space has been constructed and is available for occupancy. The foregoing figures relate only to office

space that is leased out to tenants. The space in the new buildings is not subject to controls. There are, in addition, office and specialty buildings that have been built and occupied solely by the owners of the buildings. Such space amounts to 2,000,000 square feet. The occupants of the owner-occupied buildings are not competing with the tenants of new or older buildings for space. The addition of the new office space has had the effect of attracting the tenants from the older buildings to the new buildings. As a result of fluidity of tenant movement, the owners of the spaces thus vacated have had to employ brokers to find tenants for the vacated space, canvassing potential tenants and entering into negotiations which included rent concessions, alterations and improvements, all directed toward the prompt re-renting of the vacated space. These facts show that there is no shortage of space and that a competitive market for space does exist. Even if a shortage of space did exist, such a condition would not, by itself, under any of the authorities, amount to an emergency serious enough to justify the invocation of the police power. The small vacancy ratio in office buildings is due beyond any reasonable doubt to the general improvement in the economy of the country at large. The space on the market when measured against the demand is adequate. It is not necessary to establish that every tenant can find space at the price he is able to pay, or that there is ample space in certain limited geographical areas of the city, in order to support a declaration of the end of the emergency.

The evidence of general prosperity is not a sufficient basis for a Legislature to single out one industry for the imposition of controls when all other industries, business and professions using its facilities are profiting by the prosperity. There is no evidence of an uncontrolled inflation which has been forced on the economy by reason of

a circumstance beyond the powers of our economic system. The legislative choice is without rational basis (*South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 191, 192) when tested by the Legislature's own formula that the legislation is designed to protect and promote the public health, safety and general welfare and to prevent inflation. Price control of one industry is discriminatory, confiscatory and a denial of equal protection of the law, when national policy for the past ten years has been to achieve prosperity by full employment, plant expansion, increased production and a general building boom with the approval of business, labor and other groups of our society. Such premeditated inflation obviously cannot be prevented or curtailed by the control of the rentals of a small percentage of office space in the State of New York. The known state of facts is not debatable and does not support the legislative decision.

The conviction of the legislators that there is a grave emergency without more, is insufficient to warrant a legislative resort to the police power. When the conviction rests on a theory of an emergency that does not measure up to the standards set by the Supreme Court (*Lery Leasing Co.* v. *Siegel*, 258 U. S. 242, 245), the statute enacted to exercise the police power is without the constitutional limits.

The extensions of the Business Rent Law in 1955 and 1956 neither afford the law immunity from attack nor endow it with validity or justification. In *Municipal Gas Co.* v. *Public Service Comm.* (225 N. Y. 89, 95-96), Judge Cardozo said: "But the argument is that the statute is either valid or invalid at the moment of its making, and from that premise the conclusion is supposed to follow that there is a remedy for present confiscation, but none for confiscation that results from changed conditions." He concluded "The prediction must square with the facts,

or be cast aside as worthless (*Ex parte Young*, 209 U. S. 123, 147, 148). It must square with them in one year as in another, at the beginning but equally at the end".

Whatever stringency exists at the present time as a consequence of business competition for space in the most desirable locations, is of different origin and identity from the war emergency in 1945. It is not the emergency which is recited in the preamble of this act.

The proof showing that new buildings are being constructed is not evidence of a shortage of space, but rather a desire on the part of tenants for new as well as luxurious offices. It reflects the trend in the general economy toward expansion dictated by pride in prestige, which many believe large opulent offices signalize. It is not symptomatic of necessity. Bargaining between landlords and tenants is real and not illusory. Such conditions do not warrant the interposition of the authority of the State in behalf of a particular class, as the interests of the public generally are not affected. The legislative restriction does not rest upon any reasonable base but, on the contrary, is arbitrary and unduly oppressive. The testimony as a whole establishes the absence of any emergency conditions which constitute a threat to the safety, health or welfare of the people of the State. The burden of proof required has been met. The appellant has demonstrated that the emergency police power legislation offends the well-established and ever-defended concepts of our governmental system. The presumption of constitutionality cannot be sustained by a finding of a fictitious emergency. Accordingly, the orders below should be reversed.

Conway, Ch. J., Desmond, Dye and Fuld, JJ., concur with Froessel, J.; Burke, J., dissents in an opinion in which Van Voorhis, J., concurs.

In each proceeding: Order affirmed.

Appendix B

Final Order of the New York Court of Appeals, Appealed From

No. 95

FILED JULY 19, 1956
MUNICIPAL COURT NINTH DISTRICT
BOROUGH OF MANHATTAN

COURT OF APPEALS

STATE OF NEW YORK, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 11th day of July in the year of our Lord one thousand nine hundred and fifty-six, before the Judges of said Court.

Witness,

THE HON. ALBERT CONWAY
Chief Judge, *Presiding.*

RAYMOND J. CANNON, *Clerk.*

Remittitur July 11, 1956.

Appendix B.

No. 95.

IN THE MATTER OF

SUMMARY PROCEEDINGS BY
LINCOLN BUILDING ASSOCIATES,

Landlord-Appellant,

vs.

LOCKWOOD BARR,

Tenant-Respondent.

(and two other proceedings).

BE IT REMEMBERED, That on the 24th day of March in the year of our Lord one thousand nine hundred and fifty-six, Lincoln Building Associates, the landlord-appellant in these causes, came hereunto the Court of Appeals, by Rosenman Goldmark Colin & Kaye, its attorneys, and filed in the said Court Notices of Appeal and return thereto from the orders of the Municipal Court of the City of New York.

And Lockwood Barr, & ors., the tenants-respondents in said causes, afterwards appeared in said Court of Appeals by Abraham Jame and Burke & Burke, their attorneys. And also appeared Jacob K. Javits, Attorney-General, pursuant to Section 71 of the Executive Law.

Which said Notices of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, the said Court of Appeals having heard these causes argued by

Mr. Samuel I. Rosenman, of counsel for appellant—, and by Mr. Abe Wagman, of counsel for the Attorney

General, no appearance for the remaining parties, and after due deliberation had thereon, did order and adjudge that in each proceeding: the order appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Municipal Court of the City of New York, there to be proceeded upon according to law.

Therefore, it is considered that in each proceeding: the said order be affirmed, as aforesaid.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Municipal Court of the City of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law and which record now remains in the said Municipal Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,
Albany, July 11, 1956.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said causes in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON,
Clerk.

[Seal of Court of Appeals
State of New York]

Appendix C

Emergency Business Space Rent Control Law of the State of New York, as extended by Chapter 701 of the Laws of 1955 of the State of New York*

AN ACT in relation to the regulation, control and stabilization of rents and rental agreements, and to proceedings for the recovery of possession of certain business space in cities having a population of more than one million, and to actions, proceedings and related matters involving unjust, unreasonable and oppressive rents or agreements for rent with regard to premises used or occupied as business space, and declaring a public emergency.

Section 1. [8551]** Unjust, unreasonable and oppressive leases and agreements for the payment of rent for office space and stores and other business space in certain cities having been and now being exacted by landlords under stress of prevailing conditions accelerated by war, and an abundance of eviction proceedings against tenants having been commenced or threatened by landlords, whereby breakdown has taken place in normal processes of bargaining and freedom of contract has become an

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* The text of said Rent Control Law as so extended may be found in each of the following groups of statutory compilations:

1. 1955 N. Y. Session Laws, p. 1723 (Laws of 1955, Chapter 701); 1954 N. Y. Session Laws, p. 1185 (Laws of 1954, Chapter 447); 1945 N. Y. Session Laws, p. 771 (Laws of 1945, Chapter 314).

2. McKinney's N. Y. Unconsolidated Laws, Part 2, main volume (p. 423) and 1955 cumulative pocket supplement.

3. McKinney's 1955 Session Laws of New York, p. 1019; McKinney's 1954 Session Laws of New York, p. 586; 1945 N. Y. Session Laws, p. 771.

** Numerical references in square brackets are to the section numbers of said Rent Control Law as they appear in McKinney's N. Y. Unconsolidated Laws.

illusory concept, and whereby there have come into existence conditions threatening to obstruct the production and distribution of essential civilian commodities, and the rendition of essential services, professional and otherwise, and to divert essential manpower, materials and transportation facilities, and to cause inflation, and all of the foregoing situations and conditions being a threat to essential civilian activities, and to the public safety, health, and general welfare of the people of the State of New York, it is hereby declared that a public emergency exists without promise of relief so long as conditions brought about by war continue, and that action by the legislature is imperative and will not admit of delay. It is hereby found, therefore, as a matter of legislative determination, that for the duration of such emergency, the establishment of a maximum rent for office and store and other business space at a level of fifteen per centum above rents charged on June first, nineteen hundred forty-four or at a level otherwise determined as hereinafter provided, will curb the evils arising from such emergency and will accomplish the purposes hereof. This act is declared to be a measure designed to protect and promote the public health, safety and general welfare, to aid essential civilian activities, and to conserve manpower, essential materials and transportation facilities, and to prevent inflation, and is made necessary by an existing emergency.

§ 2. [8552] Unless expressly otherwise provided, whenever used in this act, the following terms shall mean or include:

(a) "Business space." All rental space in any city other than: (1) commercial space as defined in chapter three of the laws of nineteen hundred forty-five, or any act amendatory thereof; (2) dwelling space and meeting rooms in hotels, and dwelling space in rooming houses, apartment houses, dwelling and other housing accommoda-

tions, except, on and after March first, nineteen hundred fifty-two, a building in which at least sixty per centum of the total rentable area and sixty per centum of the total number of units formerly used as dwelling space, is lawfully occupied as business space on such date; (3) piers, docks and wharf properties; (4) places of public assembly; and (5) turkish baths.

(b) "Place of public assembly." A theatre, motion picture house or theatre, sports arena or stadium, meeting room or exhibition hall.

(c) "Emergency rent." (1) The rent reserved or payable under any lease, agreement or tenancy of business space in force on June first, nineteen hundred forty-four, plus fifteen per centum of such rent, except with respect to a tenant who, since January first, nineteen hundred forty-seven, has paid the emergency rent first established without an increase in excess of fifteen per centum thereof pursuant to any of the provisions of this act, and in any such case such emergency rent, plus fifteen per centum; provided that if the business space was not used or occupied as business space on such date, the emergency rent shall be the reasonable rent therefor as business space on such date, plus fifteen per centum thereof, to be fixed by agreement, by arbitration, or by the supreme court upon the basis of the rent charged on such date for the most nearly comparable business space in the same building or other rental area, or other satisfactory evidence; provided further that if the tenant's lease, agreement or tenancy of business space was made, executed or entered into prior to June first, nineteen hundred thirty-nine and the same or any renewal or extension thereof has been continuously in force since that date, a rent exceeding in amount the emergency rent, may be fixed by the tenant and the landlord by written agreement in accordance with the provisions hereinbelow contained, or upon the land-

lord's application shall be fixed by the supreme court, in which case the rent to be so fixed by the supreme court shall be equal to the emergency rent chargeable for the most nearly comparable business space in the same building or other rental area under any lease, agreement or tenancy thereof made, executed or entered into on or after June first, nineteen hundred thirty-nine but prior to June first, nineteen hundred forty-four.

(2) The rent fixed or established as provided in paragraph (1) of this subdivision, with respect to any tenant who, since January first, nineteen hundred fifty, has paid the emergency rent so fixed or established without an increase in excess of fifteen per centum pursuant to any of the provisions of this act, and in any such case such emergency rent shall be the rent so paid plus fifteen per centum.

(d) "Landlord." An owner, lessor, sublessor, receiver, trustee, executor, assignee, or other person receiving or entitled to receive rent for the use or occupancy of the whole or a part of any business space.

(e) "Tenant." A lessee, sublessee, licensee, or other person entitled to the possession or to the use or occupancy of the whole or a part of any business space.

(f) "Rent." The consideration, including any bonus, benefit, or gratuity, charged or received by the landlord, his agents, or other representatives for the use or occupancy of the whole or any part of any business space.

(g) "Services." Repairs, decorating and maintenance, the furnishing of light, heat, steam, hot or cold water, telephone, elevator service, cleaning service, linen service, janitor service, the removal of refuse and any other facility or privilege connected with and furnished by the landlord for the use or occupancy of the business space.

(h) "Person." An individual, corporation, partnership, association, or any other organized group of individuals or the legal successors or representatives of any of the foregoing.

(i) "Supreme Court." A special term of the supreme court to be held in the county in which the business space is located.

(j) "City." A city having more than one million inhabitants.

(k) "Personal property." All goods and chattels personal other than things in action, money, insurance contracts, stocks, bonds, mortgages, notes or other obligations for the payment of money.

(l) "Store." Any space predominantly used or occupied by a tenant for the sale of personal property or the rendition of services in the ordinary course of business, provided that such rental space shall also include space for the conduct of such business on the street floor or level.

§ 3. [8553] From and after the effective date of this act and during the continuance of the emergency as defined in section seventeen, any rent which exceeds the emergency rent shall be presumed to be unjust, unreasonable and oppressive. Every landlord within twenty days after the effective date of this act shall furnish each tenant with an accurate statement of the amount of his emergency rent, and in the case of business space not used or occupied on the first day of June, nineteen hundred forty-four, such statement shall be furnished within twenty days after such rent shall be fixed or determined pursuant to subdivision (c) of section two hereof. In the case of a tenant taking possession of space on or after the date this section as amended takes effect, such statement shall be furnished within twenty days after the effective date of such new tenant's lease, rental agreement or tenancy. If a landlord

shall fail, refuse or neglect to furnish any tenant with such statement within the time specified, no rent accruing shall be collectible by such landlord during the period he is in default. Acceptance by a landlord of payment of the emergency rent by a tenant shall not be construed to be a waiver by such landlord of his right to seek increased rent from such tenant as hereinafter provided.

§ 4. [8554] 1. A rent, exceeding in amount the emergency rent, may within the limitations specified by this section, be fixed by arbitration or by the supreme court. The rent to be so fixed shall be a reasonable rent based on the fair rental value of the tenant's business space as of the date the application to the supreme court or submission to arbitration is made and the landlord shall be entitled to receive rent so fixed dating from the time of such application or submission. In the determination of the amount of such reasonable rent: (a) due consideration shall be given to the cost of maintenance and operation of the entire property (including land and building or other rental area in which such business space is located) including amount paid for taxes assessed against such property, and to the kind, quality and quantity of services furnished, but excluding amortization or interest paid or accrued on any encumbrances thereon; (b) such rent shall be fixed in such manner that it shall not exceed a fair and reasonable proportion of the gross rentals from all the business space in the entire building or other rental area, giving due consideration to the amount and character of the business space used or occupied by such tenant, provided, however, that the gross rentals from all such business space shall not exceed a fair and reasonable proportion of the gross rentals from the entire building or other rental area.

A net annual return of eight per centum on the fair value of the entire property including the land shall be presumed to be a reasonable return. The assessed valua-

tion of the entire property, including land and building, as shown by the latest completed assessment-roll of the city, shall be presumed to be the fair value of the premises, but other lawful evidence of the fair value may be offered and received. In any proceeding or arbitration under this section, the landlord within five days after written demand by the tenant or within such time as the arbitrators or the supreme court upon good cause shown may determine, shall serve upon the tenant a verified bill of particulars, setting forth the gross income derived from the entire building or other rental area during the preceding year, the names and addresses of all tenants, the rental charged each tenant and how payable, the consideration paid by the landlord for the entire property including the land, if he be the owner thereof, or if he be a lessee the name and address of the lessor and the rent agreed to be paid; the assessed valuation of the property as shown by the latest completed assessment roll of the city, separately showing the amount of the assessment on the building and the amount of the assessment on the land; the cost of maintenance and operation of the building or other rental area during the preceding year, the kind, quality, and quantity of services furnished during such year; and such other facts as the landlord claims affect the net income of the entire building or other rental area, or the reasonableness of the rent to be charged. Issue shall not be deemed to be joined in any proceeding under this section until the bill of particulars is served upon the tenant. Upon failure to serve the bill of particulars upon the tenant within the time limited, the proceeding or arbitration shall be dismissed upon motion of the tenant.

At any stage of the proceeding the tenant and the landlord may enter into a written stipulation that the fair rental value of the business space occupied by the tenant is the amount stated in such stipulation and consenting that the court so determine, and the court, upon such stipulation, may make its determination of such fair rental

value in the amount so stated. As a condition precedent to being heard in any proceeding or arbitration under this section, the tenant must pay to the landlord the emergency rent on each date when the rent is due under the terms of his lease, rental agreement or tenancy. Nothing in this act shall be construed to require submission of any controversy to arbitration.

2. A rent exceeding the amount of the emergency rent may likewise be fixed by the supreme court for business space as provided in this subdivision. In any such additional alternative proceeding to fix rents in a building or other rental area, the court shall first determine the basic return on the store space and of the office space separately, in each instance as in subdivision one of this section prescribed. A net annual return of eight per centum per annum on the fair value of the entire property including the land shall be presumed to be a basic return and shall be allocated to such office space and to such store space, respectively. When the amount of such basic return has been determined and allocated, the court shall then determine separately the fair rental value per square foot of the rental office space and of the rentable store space in such building or other rental area, taking into account the character and location of such space, by dividing the amount of the total of the net rentable office space and the amount of the total of the net rentable store space, respectively, into the amount allocated to such office space and to such store space, respectively, of the total amount of the basic return found and allocated as aforesaid. At any stage of the proceeding the tenant and the landlord may enter into a written stipulation that the fair rental value per square foot of the business space occupied by the tenant is the amount stated in such stipulation and consenting that the court so determine, and the court, upon such stipulation, may make its determination of such fair rental value in the amount so stated. Thereafter the land-

lord shall be entitled to receive rent, dating from the time the application was made, at the rate per square foot so determined and the court shall fix the rent of any tenant occupying space in such building or other rental area and who is paying rent at a rate per square foot less than the fair rental value so fixed; provided, however, that the rental increase which the landlord shall be entitled to receive and collect during the first twelve months after the date of the commencement of the proceeding shall be limited to fifteen per centum of the rent being paid by the tenant at the date of such commencement and provided further that the order to be entered therein shall provide that the landlord is entitled to receive and collect a further additional increase during each succeeding twelve month period, not exceeding fifteen per centum of the amount paid by the tenant at the date of the commencement of the proceeding until the rent shall equal the rental value as determined by the court in such proceedings. Nothing in this subdivision contained shall operate to affect any rent payable under any unexpired lease or agreement. Upon the expiration of any lease or agreement the rent payable thereunder shall be the emergency rent if such rent be equal to or in excess of the fair rental value per square foot as in this subdivision determined and fixed.

3. In any case, the tenant and the landlord may fix a reasonable rent by written agreement, signed by both the tenant and the landlord, provided that such written agreement contains a statement setting forth:

(i) the amount of the emergency rent for the tenant's space;

(ii) a statement that the landlord has advised the tenant prior to the making of such agreement of his right to continue payment of the emergency rent until modified by arbitration or by the supreme court, pursuant to section four of this act; and

(iii) a statement that the tenant, within sixty days after the date of the execution of such agreement, may cancel such agreement by notice to the landlord by registered mail enclosed in a securely sealed post-paid wrapper, addressed to the other party at his last known address and requiring a return receipt.

4.° At the option of the landlord, (a) any tenant who shall sublet twenty per centum or more of the business space occupied by him shall pay to the landlord each month the gross rents receivable by such tenant from all subtenants, less the reasonable value of the services supplied by the tenant to such subtenants, plus the emergency rent allocable to the business space retained by the tenant for his own use; or (b) any person who shall occupy or use business space as sublessee or subtenant of a tenant shall be subject to the obligations and liabilities of such tenant as tenant in such space and the landlord shall be entitled to receive from such sublessee or subtenant or successor thereof the rent which such tenant is or was obligated to pay the landlord as the emergency rent of the premises, except that any such sublessee or subtenant who shall occupy less than the entire space of the tenant shall pay rent to the landlord in the proportion which the space occupied or used by him bears to the entire rent which the tenant is or was obligated to pay to the landlord, less the reasonable value of the services furnished by the landlord to other occupants of such space, if any; or (c) after a tenant has vacated such space the landlord may elect to offer the entire space which was demised to the tenant to all sublessees or subtenants, if such sublessees or subtenants become such with the consent or approval of the landlord, at a rent reserved or payable as emergency rent by the tenant at the time he vacated such space, and, upon the failure of any such sublessee or subtenant to execute such a lease for a period of one year the landlord shall

be entitled to remove such sublessee or subtenant and in such event the issuance of a final order in a summary proceeding shall be stayed for a period of not more than sixty days, but, in the event such sublessees or subtenants became such without the consent or approval of the landlord, the provisions of section twelve of this act relating to space vacated by a tenant shall apply in all respects to such space.

Any tenant who shall sublet twenty per centum or more of the business space occupied by him shall furnish the landlord, upon the written request of the landlord, a written and verified statement containing the following information with respect to each of such subtenants, viz: the name and address, the amount of space occupied, the emergency rent, and the terms of the lease, rental agreement or tenancy under which occupied; and, if such space is occupied under a written lease or rental agreement, a true copy thereof shall be appended to such statement. Such request by the landlord shall be made within thirty days prior to the date of expiration of the lease or rental agreement of the tenant, or at any time thereafter while such tenant remains in possession, and such statement shall be furnished by the tenant within twenty days after the making of such request.

5. Any landlord who shall willfully demand or accept a rent in excess of the emergency rent, or a rent fixed pursuant to section four of this act shall forfeit one succeeding month's rent.

6. The rent fixed by arbitration or by the supreme court or the rent reserved or payable under any such written agreement shall be the emergency rent for such space until and unless a new rent shall be fixed by arbitration or the supreme court or the tenant or a successor tenant and the landlord shall make a new agreement.

§ 5. [8555] Nothing contained in this act shall authorize a landlord to seek, demand or receive increased rent, (a) under any lease or rental agreement made prior to the effective date of this act wherein the rent reserved does not exceed the emergency rent; or, (b) under any lease or rental agreement made after the effective date of this act wherein the rent reserved is less than the emergency rent.

§ 6. [8556] No proceeding shall be instituted or maintained, during the continuance of the emergency declared by this act, to recover possession of any business space for or on account of a default in payment of rent, unless the petitioner shall allege in the petition and prove to the satisfaction of the court: (a) that the rent charged is not greater than the emergency rent for such business space or such greater rent therefor as may have been fixed pursuant to section four of this act, and where a separate charge is made for furnishing live steam, that such charge does not exceed the charge made by a public utility for the same service; and (b) that the services furnished by the landlord to the tenant have not been unreasonably diminished since the effective date of the existing lease, rental agreement or tenancy. To the extent that the rent charged is in excess of the emergency rent, or such greater rent as may have been fixed pursuant to section four of this act, the tenant may interpose the defense that the rent charged is unjust, unreasonable and oppressive and, if such defense be interposed, the rent charged, to the extent of such excess, shall be uncollectible.

§ 7. (a) [8557] In any action to recover rent for business space accruing during the period of the emergency, it shall be a defense that such rent is unjust, unreasonable and oppressive if such rent is in excess of the emergency rent or any rent which may be fixed pursuant to section

four of this act or that a separate charge is made for furnishing live steam which charge exceeds the charge made by a public utility for the same service, and to the extent of such excess the same shall be uncollectible. (b) The tenant may interpose the defense that the rental value of the business space has been reduced by reason of an unreasonable diminution of services by the landlord, and to the extent that the court shall find that such services have been so diminished, the value thereof shall be allowed in reduction of the rent charged and shall be uncollectible, or, in the alternative, the tenant shall be entitled to a cause of action to recover a proportionate amount of the rent paid, or may apply to the court for injunctive relief and, in such an action, the tenant shall be entitled to prove and collect damages.

§ 8. [8558] So long as the tenant continues to pay the rent to which the landlord is entitled, under the provisions of this act, no tenant shall be removed from any business space, by action or proceeding to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removel or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and notwithstanding the issuance of any order to dispossess, warrant or process prior to the effective date of this act, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which is inconsistent with any of the provisions of this act, unless:

(a) The tenant has unreasonably refused the landlord, or a purchaser of the premises under a contract of sale with the landlord, access to any part of the business space for the purpose of inspection, surveying, or the making of borings or subsurface examinations, which examinations do not unduly interfere with the business of the tenant,

or of showing such space to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein; provided, however, that such refusal shall not be ground for removal or eviction if such inspection or showing of the business space is contrary to the provisions of the tenant's lease or other rental agreement; or

(b) The tenant (1) has violated a substantial obligation of his lease, rental agreement or tenancy, other than an obligation to pay rent, and has continued or failed to cure such violation after written notice by the landlord that the violation cease, or (2) is committing or permitting a nuisance or is using or permitting a use of the business space for illegal purposes, or (3) has failed or refused to furnish the landlord the statement required as provided in subdivision four of section four; or

(c) The landlord seeks in good faith to recover possession for the immediate purpose of demolishing or reconstructing the building or other rental area or completing such demolition or reconstruction with the intention of constructing a new building or substantially reconstructing the building, and the plans for such construction or reconstruction have been approved by the proper authorities, if such approval is required by law. The words "reconstructing" or "reconstruction" as used in this subdivision (c) shall be limited to substantial structural changes involving alterations affecting at least fifty per centum of the entire rentable space thereof or which increases the rentable space thereof by at least twenty per centum. If the landlord shall fail to start the demolition or reconstruction of the building or other rental area within ninety days after the removal of the tenant, or if after having commenced the demolition or reconstruction of such building or other rental area shall fail or neglect

to prosecute the work with reasonable diligence, he shall, unless for good cause shown, be liable to the tenant for all damages sustained on account of such removal. In addition to any other damage sustained, the cost of removal of plant and property shall be a lawful measure of damage; or

(cc) The landlord seeks in good faith to recover possession for the immediate purpose of demolishing the building or other rental area to recover possession of land which is part of an entire plot with the intention of constructing a new building, which construction cannot be begun or is prohibited or the approval of the plans therefor cannot be obtained because of priorities provided by the defense production act of nineteen hundred fifty, as amended, and regulations promulgated and orders issued thereunder. Until such approval can be obtained or construction begun, the landlord shall be authorized to use the land upon which such building stood prior to demolition or such other rental area or other parts of such plot as a parking lot for motor vehicles; or

(d) (1) The landlord owned or acquired an enforceable right to buy or take possession of the building or other rental area on or before January twenty-fourth, nineteen hundred forty-five and seeks in good faith to recover possession of the business space for his immediate and personal use; or possession is sought by a person who acquires title to the building or other rental area subsequent to such date or to give possession to a person who subsequent to such date acquires at least ninety per centum of the stock of a corporation which owns property in which business space is located, and who likewise seeks in good faith to recover possession of the business space for his immediate and personal uses; or possession is sought by such landlord or by such person to give possession to an-

other person who is a subsidiary corporation at least ninety per centum of whose stock is owned by such landlord or by such person, and such landlord or such person seeks in good faith to recover possession of the business space for the immediate and personal use of such subsidiary corporation; provided, however, that in any event specified in this paragraph, such landlord or such person who acquired title after such date shall have an equity in the property of not less than twenty per centum of the purchase price or shall have paid in cash on the date of purchase of the stock not less than twenty per centum of the sum total of the encumbrances on such property plus the consideration paid for such stock; and provided, further, that nothing in this subdivision contained shall authorize the dispossession of a tenant during the term of his lease by such landlord or such person unless by the terms of the lease the privilege is reserved to terminate the lease; and provided further that no such landlord or such person shall be entitled to invoke the provisions of this paragraph unless such landlord, person or corporation shall possess an interest of not less than fifty per centum of the whole investment in the business which it is proposed to carry on in such space; or

(2) Possession is sought by a person who is the lessee or sub-lessee of an entire building for a term of twenty-one years or more who seeks in good faith to obtain possession of the business space for his immediate and personal use, or possession is sought by such lessee or sub-lessee to give possession to another person who is a subsidiary corporation at least ninety per centum of whose stock is owned by such lessee or sub-lessee, and such lessee or sub-lessee seeks in good faith to recover possession of the business space for the immediate and personal use of such subsidiary corporation; or

(3) Possession is sought by a landlord of a rental area upon which no permanent buildings are erected or which is used as a parking lot for motor vehicles for the purpose of erecting a new building, in case such landlord acquired title thereto subsequent to such date;

If such landlord or such person shall fail, after thirty days subsequent to dispossession a tenant under the provisions of this subdivision, to occupy such space and actively to conduct such business therein, or if such landlord acquired possession of a rental area for the purpose of erecting a new building shall fail to file for approval a plan to construct such multiple dwelling with the appropriate agency after thirty days subsequent to dispossessing such tenant or fails diligently to perform the acts necessary to commence construction, or if such landlord or such person shall, or if such landlord or such person shall lease or rent such space to or permit occupancy thereof by a third person within a period of one year after such dispossession, he shall be liable to the tenant for all damages sustained on account of such removal, provided, however, that if the making of alterations shall prevent the active conduct of such business therein, such period of thirty days shall begin to run after the completion of such alterations. In addition to any other damage, the cost of removal of plant and property shall be a lawful measure of damage. In any case where such landlord or lessee during such year shall permit the making of alterations within such space for a tenant who shall become entitled to possession after the termination of such period of one year, such liability for damages on account of dispossession shall not apply; or

(c) The tenant, whose lease or rental agreement has expired or shall hereafter expire during the continuance of the emergency declared by this act, has refused, subsequent to the date this act takes effect, to execute, upon

demand of the landlord, a renewal of the prior lease or rental agreement for a further term of like duration or for such shorter term as the landlord may elect, on substantially similar terms and conditions as are contained in such prior lease or rental agreement, provided that the terms and conditions of such renewed lease or rental agreement are not inconsistent with any of the provisions of this act, and provided that such demand be transmitted by the landlord to the tenant by registered mail, and provided further that the rent reserved in such renewed lease or rental agreement may be any amount not in excess of the emergency rent for such tenant's business space. In the case of an unexpired lease, the tenant shall be required to agree to execute such renewal not more than twelve months and not less than six months prior to the expiration date of the lease, and in the case of an expired lease, within thirty days subsequent to the receipt of such demand. The landlord shall not be entitled to seek a fixation of rent pursuant to section four of this act where the rent reserved in any such renewed lease or rental agreement is less than the emergency rent; or

(f) The tenant occupies business space in a building or other rental area required to be demolished in order to carry out a housing or rehabilitation project instituted under the public housing law or the redevelopment companies law, or section eighty-four of the insurance law.

(g) The tenant, being in possession under an expired lease or tenancy or as a monthly or statutory tenant, agrees in writing, or notifies the landlord in writing of his intention, to terminate his occupancy of the premises on a date certain in the future, or a tenant in possession under a lease not yet expired agrees in writing, by agreement executed not less than three months after the commencement of the term thereof, to terminate his occupancy at

any time before or after expiration of the term of such lease. Any tenant, being in possession under an expired lease or tenancy or as a monthly or statutory tenant, who vacates premises without giving the landlord thirty days' written notice by registered mail of his intention to vacate shall be liable to the landlord for an additional month's rent.

(h) On or before January twenty-fourth, nineteen hundred forty-five:

(1) the landlord acquired an enforceable right to take possession of the entire building or other rental area for a term of not less than ten years; or,

(2) a person owned and owns, at least ninety per centum of the stock of a corporation which owned and owns the entire premises or which was the lessee of the entire building or other rental area for a term of not less than ten years; or

(3) a corporation at least ninety per centum of whose stock was owned and is owned by a person, or a wholly-owned subsidiary corporation of such person, which person owned and owns the entire premises or who was the lessee of the entire building or other rental area for a term of not less than ten years or who owned all of the stock of another subsidiary corporation which was the lessee of the entire building or other rental area for a term of not less than ten years; or

(4) a corporation leased and leases business space from a person who owned and owns or who was the lessee of the entire building for a term of not less than ten years and who also owned and owns at least ninety per centum of the stock of such corporation; and such landlord, person

or corporation seeks in good faith to recover possession of the business space for his or its own immediate and personal use; provided, however, that nothing in this subdivision contained shall authorize the dispossession of a tenant during the term of his lease by such landlord, person or corporation, unless by the terms of the lease, the privilege is reserved to terminate the lease for reasons which would not preclude the remedy afforded under this subdivision; or

(5) The landlord in writing executed and delivered a lease of the entire building or other rental area for a term of not less than ten years and the tenant named in said lease has demanded in writing from the landlord possession of such building or other rental area for his own and immediate use under the terms of said lease. If the landlord, person or corporation shall fail, after thirty days subsequent to dispossessing a tenant under the provisions of this subdivision, to occupy such space and actively to conduct such business therein, or if the landlord, person or corporation shall lease or rent such space to or permit occupancy thereof by a third person within a period of one year after such dispossession, he or it shall be liable to the tenant for all damages sustained on account of such removal. In addition to any other damage, the cost of removal of plant and property shall be a lawful measure of damage.

(6) an unincorporated labor organization which owns at least ninety per centum of the stock of a corporation owning the entire premises seeks in good faith to recover possession of the business space for its own immediate and personal use; provided, however, that nothing in this subdivision contained shall authorize the dispossession of a tenant during the term of his lease by such unincorporated labor organization, unless by the terms of the

lease, the privilege is reserved to terminate the lease for reasons which would not preclude the remedy afforded under this subdivision. If the unincorporated labor organization shall fail, after thirty days subsequent to dispossessing a tenant under the provisions of this subdivision, to occupy such space and actively to conduct such business therein, or if the unincorporated labor organization shall lease or rent such space to or permit occupancy thereof by a third person within a period of one year after such dispossession, it shall be liable to the tenant for all damages sustained on account of such removal. In addition to any other damage, the cost of removal of plant and property shall be a lawful measure of damage.

(j) one or more corporations or unincorporated organizations or associations, each organized exclusively for religious, charitable, health, hospital, educational or scientific purposes, or for two or more such purposes, and not for any pecuniary profit for itself or any officer, member or employee thereof, except reasonable compensation for services in effecting one or more of such purposes, which own the entire premises or are members of a membership corporation owning the entire premises or own at least ninety per centum of the stock of a stock corporation owning the entire premises, seek in good faith to recover possession of the business space for the immediate and personal use of themselves or any of them; provided, however, that nothing in this subdivision contained shall authorize the dispossession of a tenant during the term of his lease by any such corporation or corporations or unincorporated organization or organizations or association or associations, unless by the terms of the lease the privilege is reserved to terminate the lease for reasons which would not preclude the remedy afforded under this subdivision. If none of the corporations or unincorporated organizations or associations shall, within thirty days subsequent to dis-

possessing a tenant under the provisions of this subdivision, occupy such space and actively conduct such business therein, or if the corporation or corporations or unincorporated organization or organizations or association or associations shall lease or rent such space to or permit occupancy thereof by a third person within a period of one year after such dispossession, it or they shall be liable to the tenant for all damages sustained on account of such removal. In addition to any other damage, the cost of removal of plant and property shall be a lawful measure of damage.

(k) the landlord, subject to the following conditions, receives and accepts a bona fide offer to enter into a lease with a prospective tenant for any store occupied by one tenant, which lease provides for a rental of three thousand dollars per annum or more, for a term of not less than ten years, non-cancellable except for the violation of any term or obligation of such lease, and the landlord offers to execute a lease containing the same terms and conditions with the tenant in possession and delivers to the tenant in possession a copy of such lease with the prospective tenant, and such tenant fails, neglects or refuses to execute such a lease within thirty days after tender thereof to such tenant; provided, however, that in the case of such a lease with a prospective tenant for a store or stores occupied by more than one tenant, and in which lease the rent reserved is ten thousand dollars per annum or more, the landlord shall not be required to offer to execute or to tender the lease to any such tenant; and provided, further, that nothing in this subdivision contained shall authorize the dispossession of a tenant during the term of his lease by such landlord unless, by the terms of the lease, the privilege is reserved to terminate the lease for reasons which would not preclude the remedy afforded under this subdivision. If such prospective tenant shall fail, after thirty days sub-

sequent to such dispossession, to occupy such store, or if the landlord shall lease or rent such store to or permit occupancy thereof by a third person within a period of one year after such dispossession, the landlord shall be liable to the tenant so dispossessed for all damages sustained on account of such removal, provided, however, that if the making of alterations shall prevent the active conduct of such business therein, such period of thirty days shall begin to run after the completion of such alterations. In addition to any other damage, the cost of removal of all property shall be a lawful measure of damage. In any case where such landlord during such year shall permit the making of alterations within such space for a tenant who shall become entitled to possession after the termination of such period of one year, such liability for damages on account of dispossession shall not apply

A lease shall be deemed or construed to be non-cancellable, within the meaning of this subdivision, even though it permits either landlord or tenant, or both, to cancel the same if (1) possession is not made available to the tenant within one year after the execution thereof; or (2) the premises are taken by the exercise of eminent domain; or (3) the premises are destroyed by fire; but if a lease shall include such provision the court, before authorizing the execution of a warrant, shall require satisfactory evidence that the election to cancel the new lease has not been exercised, and in the absence of such evidence, the court shall dismiss any action or proceeding or void any final order, judgment, warrant or other process against the tenant in possession.

As used in this subdivision the word "store" shall mean business space at street level and two floors above and below street level or any part thereof, provided, it includes space at street level, used or to be used and/or occupied or to be occupied by a tenant for the sale of personal property

and/or the rendition of services in the ordinary course of business.

(kk) the landlord, subject to the following conditions, receives and accepts a bona fide offer to enter into a lease with a prospective tenant, including a tenant then occupying business space in the same building, hereinafter in this subdivision in either case referred to as the first tenant, for business space occupied by a tenant in possession under an expired lease with less than twenty-five per centum of the net rentable area of the floor, hereinafter in this subdivision, referred to as the second tenant, provided such lease is for a term of five years or more and provided the space occupied by the second tenant is included within a larger space covering the entire rentable area of at least one floor in the same building to be occupied or in part then occupied by the first tenant, and the landlord offers to relocate such second tenant, at the expense of the landlord in space in the same building if a vacancy exists therein, and delivers to such second tenant a notice in writing to the effect that the landlord has agreed to lease to the first tenant the space occupied by the second tenant, and such second tenant fails, neglects or refuses to be so relocated within thirty days after service of such notice. In the event that the first tenant already occupies more than four times the floor space occupied by the second tenant, this subdivision shall apply even though such second tenant occupies more than twenty-five per centum of the net rentable area of the floor. In the event such second tenant shall be dispossessed from such space under this subdivision if such first tenant shall fail, after thirty days subsequent to such dispossession, to occupy such place from which the second tenant has been dispossessed, or if the landlord shall lease or rent such space to or permit occupancy thereof by a third person within a period of one year after such dispossession the landlord shall be liable to the

tenant so dispossessed for all damages sustained on account of such removal, provided, however, that if the making of alterations shall prevent the active conduct of the business of the first tenant in such space, such period of thirty days shall begin to run after the completion of such alterations. In addition to any other damage, the cost of removal of all property shall be a lawful measure of damage. In any case where such landlord during such year shall permit the making of alterations within such space for a tenant who shall become entitled to possession after the termination of such period of one year, such liability for damages on account of dispossession shall not apply.

(i) a person or a corporation which by assignment shall succeed or shall have succeeded to the rights of a lessee of an entire building for a term of not less than ten years covered by a lease which was executed prior to January twenty-fourth, nineteen hundred forty-five, seeks in good faith to recover possession of the business space for his or its own immediate and personal use or for the immediate and personal use of a subsidiary corporation at least ninety per centum of whose stock is owned by such assignee; provided, however, that nothing in this subdivision contained shall authorize the dispossession of a tenant during the term of his lease by such landlord, person or corporation, unless by the terms of the lease, the privilege is reserved to terminate the lease for reasons which would not preclude the remedy afforded under this subdivision. If the landlord, person or corporation shall fail, after thirty days subsequent to dispossessing a tenant under the provisions of this subdivision, to occupy such space and actively to conduct such business therein, or if the landlord, person or corporation shall lease or rent such space to or permit occupancy thereof by a third person within a period of one year after such dispossession, he or it shall be liable to the tenant for all damages sustained on account of such re-

moval. In addition to any other damage, the cost of removal of plant and property shall be a lawful measure of damage.

(m) Possession is sought by a person who is a main tenant and who is a practitioner of law, medicine, dentistry, veterinary medicine, optometry, podiatry, architecture, engineering or surveying, who shall have sublet all or part of his business space, including all or part of his professional equipment, who seeks in good faith to obtain possession of such space for his immediate and personal use. If such main tenant shall fail, after thirty days subsequent to dispossessing a subtenant under the provisions of this subdivision, to occupy such space and actively to conduct such practice therein, or if such main tenant shall sublet or rent such space to or permit occupancy thereof by a third person within a period of one year after such dispossession, such main tenant shall be liable to the subtenant for all damages sustained on account of such removal. In addition to any other damage, the cost of removal from such space shall be a lawful measure of damage.

Any person entitled to possession of real property or any part thereof under any of the provisions of this section, shall be entitled to maintain and prosecute summary proceedings pursuant to article eighty-three of the civil practice act in order to obtain such possession.

Where a final order has been entered in any proceeding to evict a tenant pursuant to the provisions of this section, the court shall have power to stay the issuance of a warrant for a period which shall not extend beyond six months following the time of commencement of the proceeding, or two months from the entry of the final order, whichever is longer, except that where a final order has been entered pursuant to the provisions of subdivision (g) of this section the court shall have the power to stay the issuance of a warrant for a period which shall not extend beyond

two months following the time of commencement of the proceeding, or one month from the entry of the final order, whichever is longer, or where any tenant in possession fails, neglects or refuses to execute a lease or be relocated within the time prescribed in subdivisions (k) and (kk) respectively of this section, the court shall have the power to stay the issuance of a warrant for a period which shall not extend beyond three months following the time of commencement of the proceeding, or one month from the entry of the final order, whichever is longer, but in no event to extend beyond the emergency period as defined in section seventeen.

§ 9. [8559] In the case of any lease or rental agreement for use or occupancy of business space, which lease or rental agreement was entered into for a term commencing subsequent to the effective date of this act by a tenant who occupied such space under a prior lease or rental agreement, the expiration date of which immediately precedes the date of commencement of the subsequent lease or rental agreement, and the term of which subsequent lease or rental agreement exceeds the term of such prior lease or rental agreement, the supreme court, upon action commenced by the tenant within sixty days after the effective date of this act, may abridge the term of such subsequent lease or rental agreement, as justice shall require, but in no event so that such term shall be less than that of the prior lease or rental agreement, provided that the tenant shall establish that such subsequent lease or rental agreement was, on the date of its execution, unjust, unreasonable and oppressive as to any of the terms and provisions thereof other than the rent reserved therein.

§ 10. [8560] No landlord shall be answerable in damages or otherwise for failure to give possession to a new tenant not in possession where the tenant in possession is per-

mitted to hold over by virtue of any of the provisions of this act. An option in favor of a tenant to purchase, lease or otherwise to acquire any interest in the premises which option is contained in any lease or agreement shall not survive the expiration date of such lease or agreement.

§ 11. [8561] Rents are frozen and stabilized as of the effective date hereof in the manner provided herein, and nothing contained in this act shall create any claim or cause of action in favor of a tenant against a landlord to recover moneys paid as rent for business space for a period prior to the effective date of this act; nor shall any cause of action in favor of a tenant against a landlord which shall have been or shall be created by this act be instituted unless begun within one year after the cause of action accrued except that in the case of any such cause of action prior to April eleventh, nineteen hundred forty-nine, such cause of action shall be barred unless begun within one year from such date.

§ 12. [8562] Any waiver of any of the provisions of this act shall be unenforceable and void, but a release by a tenant, in writing and for a valid consideration, shall not be deemed to be such a waiver. The provisions of this act, however, shall be inapplicable to (a) any lease or rental agreement for business space for a term or terms aggregating not more than four months in any calendar year, to (b) any lease or rental agreement for the temporary use of land as a parking lot for motor vehicles pursuant to subdivision (cc) of section eight, to (c) any business space in any building or other rental area all or part of which heretofore has been taken or hereafter shall be taken in condemnation; to (d) any business space with respect to which the state or any city or the New York City Housing Authority has heretofore

acquired or shall hereafter acquire the status of landlord. The provisions of this act shall be inapplicable with respect to any business space now vacant or hereafter vacated by a tenant, or to space demised under a lease or sublease executed subsequent to March thirty-first, nineteen hundred fifty to a person not in possession at the time of the execution thereof.

§ 13. [8563] To the extent that the provisions of this act are inconsistent with the provisions of any general, special or local law or charter provisions, the provisions of this act shall be controlling. Any lease existing or future wherein the specified rent or any part thereof is variable according to volume or other criteria of volume of the tenant's business shall continue without change, but where such lease provides for the payment of a fixed basic or minimum rent, such fixed amount shall be subject to the provisions of this act including all of the provisions of this section; provided, however, that nothing in this provision contained shall be deemed or construed to bar the fixation of rent, after the expiration of any such lease, pursuant to the provisions of section four hereof. The provisions of any lease for a term of more than three years, in force since on or before June first, nineteen hundred forty-four, wherein the rental stipulated is in a graduated scale, shall determine the rents payable during the term of such lease notwithstanding the subsequent modification of any of its terms; and upon the expiration of such lease, the emergency rent shall be a reasonable rent to be fixed by agreement, by arbitration, or by the supreme court upon the basis of the rent charged for the most nearly comparable business space in the same building or other rental area, or other satisfactory evidence, at the time or such agreement, or on the date the application to the supreme court or submission to arbitration is made. Pending the fixation of such reasonable rent, without

prejudice to their respective rights, the tenant shall pay and the landlord may accept rent upon the basis charged during the last month of the expired lease. If any provision of this act or the application thereof to any person or circumstance is held invalid the remainder of the act and the application of such provisions to other persons or circumstances shall not be affected thereby.

§ 14. [8564] In order to encourage new construction and to relieve the shortage of business space, the provisions of this act shall be inapplicable to any new building in course of construction, or completed, on or after March thirtieth, nineteen hundred forty-six.

§ 15. [8565] The provisions of article eighty-four of the civil practice act shall apply to any controversy submitted to arbitration pursuant to the provisions of this act and any proceedings to set aside an award made by an arbitrator hereunder shall be begun within three months. Neither the oath of any arbitrator, nor any hearing provided for under such article shall be waived, nor shall any person act as any such arbitrator who directly or indirectly in any way shall be connected or associated in interest or otherwise with the landlord or the tenant, and no arbitration agreement shall be submitted to the supreme court unless the application be accompanied by an affidavit of the arbitrator or arbitrators showing strict compliance with this requirement and by a transcript of the minutes of such hearing.

§ 16. [8566] This act shall be known and may be cited as the emergency business space rent control law.

§ 17. [8567] The emergency herein described is hereby declared to continue until July first, nineteen hundred fifty-six.